INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

DISPUTE REGARDING NAVIGATIONAL AND RELATED RIGHTS

(COSTA RICA *v.* NICARAGUA)

VOLUME I
Application; Memorial of Costa Rica

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

DIFFÉREND RELATIF À DES DROITS DE NAVIGATION ET DES DROITS CONNEXES

(COSTA RICA c. NICARAGUA)

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This case, entered on the Court's General List on 29 September 2005 under number 133, was the subject of a Judgment delivered on 13 July 2009 (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 213).

The documents relating to the case are being published in the following order:

Volume I. Application; Memorial of Costa Rica.
Volume II. Memorial of Costa Rica *(continuation)*.
Volume III. Counter-Memorial of Nicaragua; Reply of Costa Rica.
Volume IV. Reply of Costa Rica *(continuation)*; Rejoinder of Nicaragua.
Volume V. Rejoinder of Nicaragua *(continuation)*; Verbatim Records of the Hearings.

*

For the purposes of this edition, the Court has decided that the written pleadings will be reproduced *in full*; it will therefore also include the documents annexed to those pleadings, which are not made available on the Court's website. The reproduction of all the annexed documents in this edition will enable practitioners to appreciate better the full scope of the arguments developed by the Parties in their written pleadings. As usual, the verbatim records of the public hearings appear after the pleadings; these verbatim records are published here in their final corrected versions, providing a useful supplement to the provisional versions made available on the Court's website.

Since the Court wishes to publish these documents as quickly as possible, it has been decided, where technically feasible, to reproduce the pleadings in the form in which they were submitted by the Parties.

Some documents in this edition have thus been scanned, and there are consequently two types of page numbering for the items included in these volumes: in addition to the normal continuous pagination, the original page numbers of the scanned documents are provided in brackets for reference purposes.

The Hague, 2011.

La présente affaire, inscrite au rôle général de la Cour sous le numéro 133 le 29 septembre 2005, a fait l'objet d'un arrêt rendu le 13 juillet 2009 (*Différend relatif à des droits de navigation et des droits connexes (Costa Rica* c. *Nicaragua), arrêt, C.I.J. Recueil 2009*, p. 213).

Les documents relatifs à cette affaire sont publiés dans l'ordre suivant:

Volume I. Requête; mémoire du Costa Rica.
Volume II. Mémoire du Costa Rica *(suite)*.
Volume III. Contre-mémoire du Nicaragua; réplique du Costa Rica.
Volume IV. Réplique du Costa Rica *(suite)*; duplique du Nicaragua.
Volume V. Duplique du Nicaragua *(suite)*; comptes rendus d'audience.

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La Cour souhaitant que lesdits documents paraissent aussi rapidement que possible, il a été décidé, chaque fois que les moyens techniques le permettraient, de reproduire les pièces de procédure en l'état où elles ont été présentées par les Parties.

Ainsi, certaines pièces de la présente édition ont été scannées et, de ce fait, les titres courants du présent ouvrage comportent deux genres de folios: outre la pagination continue habituelle, on trouvera, entre crochets, la pagination d'origine des pièces scannées, à laquelle il faudra se reporter en cas de renvoi.

La Haye, 2011.

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APPLICATION INSTITUTING PROCEEDINGS SUBMITTED BY THE GOVERNMENT OF COSTA RICA

REQUÊTE INTRODUCTIVE D'INSTANCE PRÉSENTÉE PAR LE GOUVERNEMENT DU COSTA RICA

2005
General List
No. 133

I. THE MINISTER OF FOREIGN AFFAIRS OF COSTA RICA TO THE AMBASSADOR OF COSTA RICA TO THE KINGDOM OF THE NETHERLANDS

27 September 2005.

I write to inform you that the Government of the Republic of Costa Rica has decided to present before the honourable International Court of Justice the case pertaining to its navigational rights in the San Juan River.

The President of the Republic and I have agreed to designate you as Agent of Costa Rica before the International Court of Justice, in compliance with Article 40, paragraph 1, of the Rules. I attach an additional copy of this letter and ask that you present it to the Registrar of the Court at the time of filing the Application.

I take this opportunity to assure you the securities of my consideration.

(Signed) Roberto TOVAR FAJA.

THE MINISTER OF FOREIGN AFFAIRS OF COSTA RICA TO THE AMBASSADOR OF COSTA RICA TO THE KINGDOM OF THE NETHERLANDS

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DU COSTA RICA À L'AMBASSADEUR DU COSTA RICA AUPRÈS DU ROYAUME DES PAYS-BAS

[Original Spanish text]
[Texte original en espagnol]

27 de septiembre de 2005.

Me es grato saludarle con el propósito de informarle que el Gobierno de la República de Costa Rica ha decidido presentar ante la Excelentísima Corte Internacional de Justicia el caso referido a sus derechos de libre navegación en el Río San Juan.

Tanto el señor Presidente de la República como el suscrito, hemos tenido por bien designarle como el Agente de Costa Rica ante la Corte Internacional de Justicia, de conformidad con el artículo 40, párrafo 1 del Reglamento de la Corte. Incluyo dos versiones en inglés de esta nota, y le solicito que entregue una de ellas a la Secretaría de la Corte al momento de presentar la Solicitud adjunta.

Aprovecho esta ocasión para reiterarle las seguridades de mi mayor consideración.

(Firmado) Roberto TOVAR FAJA.

II. APPLICATION INSTITUTING PROCEEDINGS

To the Registrar, International Court of Justice.

The undersigned being duly authorized, by the Government of the Republic of Costa Rica.

INTRODUCTION

1. On behalf of the Government of the Republic of Costa Rica and pursuant to Article 36, paragraphs 1 and 2, and Article 40 of the Statute of the Court and Article 38 of the Rules of Court, I have the honour to submit for decision of the Court the present Application instituting proceedings against the Government of the Republic of Nicaragua. The case concerns breaches of Nicaragua's obligations towards Costa Rica under the following:

(a) the Treaty of Limits between Costa Rica and Nicaragua, San José, 15 April 1858 ("the Treaty of Limits"), in particular Article VI[1];

(b) the arbitral award issued by the President of the United States of America, Grover Cleveland, on 22 March 1888 ("the Cleveland Award"), declaring the extent of Costa Rica's right of navigation of the River San Juan[2];

(c) the judgment of the Central American Court of Justice in the case *Costa Rica* v. *Nicaragua*, 13 September 1916[3];
(d) the Agreement Supplementary to Article IV of the Pact of Amity, Washington, 9 January 1956 ("the 1956 Agreement"), in particular Articles I and II[4]; and
(e) other applicable rules and principles of international law.

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[1] This is referred to as the Cañas-Jeréz Treaty. An English translation of the Treaty is found in the Costa Rican Memorial presented to President Cleveland in 1887: see *Argument on the Questions of the Validity of the Treaty of Limits between Costa Rica and Nicaragua and Other Supplementary Points Connected with It, Submitted to the Arbitration of the President of the United States of America, Filed on Behalf of the Government of Costa Rica by Pedro Pérez Zeledón, Its Envoy Extraordinary and Minister Plenipotentiary in the United States* (translated into English by J. L. Rodríguez, Washington, Gibson Bros., Printers and Bookbinders, 1887). *Source:* US National Archives, Record Group 76, Record of Boundary and Claims Commission and Arbitration, Costa Rica-Nicaragua Boundary Arbitration, NC-155, Entry 24. This and the original Spanish text are at Attachment 1.

[2] The Award was given in English: see *Foreign Relations of the United States*, 1889/I, pp. 456-459 (Attachment 2).

[3] English translation published in (1917) 11 *American Journal of International Law* 181.

[4] 1465 United Nations, *Treaty Series*, 233 (Attachment 3).

The Court's Jurisdiction

2. The Court has jurisdiction over the present dispute in accordance with the provisions of Article 36, paragraph 2, of its Statute, by virtue of the operation of the following:

(a) the declarations of acceptance made respectively by the Republic of Costa Rica dated 20 February 1973 and by the Republic of Nicaragua dated 24 September 1929;

(b) the Tovar-Caldera Agreement, Alajuela, 26 September 2002[5].

3. The Court also has jurisdiction over the present dispute in accordance with the provisions of Article 36, paragraph 1, of its Statute, by virtue of the operation of the American Treaty on Pacific Settlement of Disputes, Bogotá, 30 April 1948, Article XXXI (the Pact of Bogotá)[6]. The Parties have expressed their commitment to the Pact of Bogotá through the Pact of Amity, Washington, 21 February 1949, Article III[7].

4. Under the Tovar-Caldera Agreement, in consideration of Nicaragua maintaining unchanged for three years the legal status with respect to its declaration of acceptance of this Court, Costa Rica agreed during the same period not to initiate any action "before the Court nor before any other authority on any matter or protest mentioned in treaties or agreements currently in force between both countries"[8].

5. During the three-year standstill period, the two Parties were indeed able to make progress on a number of important issues for the Central American region, to their mutual benefit. Unfortunately, however, the dispute over Costa Rica's navigational and related rights on the San Juan River remains unresolved. It is this dispute which is now submitted to the Court.

Character of the Dispute

6. Article VI of the Treaty of Limits granted to Nicaragua sovereignty over the waters of the San Juan River, recognizing at the same time important rights to Costa Rica. These rights were confirmed and interpreted with binding effect by the Cleveland Award and by the judgment of the Central American Court of Justice of 1916. According to these instruments and other applicable rules

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[5] 2197 United Nations, *Treaty Series*, 78 (Attachment 4).

[6] 30 United Nations, *Treaty Series*, 55. Both Costa Rica and Nicaragua are parties to the Pact of Bogotá.

[7] 1465 United Nations, *Treaty Series*, 221 (Attachment 5).

[8] As quoted in *La Prensa* (Managua), 27 September 2002, the President of Nicaragua, Enrique Bolaños said:

> "Siempre reconocemos a la Corte Internacional y lo que estamos haciendo precisamente es dar un compás de espera, pero estoy seguro que dentro de tres años Nicaragua y Costa Rica no vamos a necesitar acudir a ninguna Corte." (In English: "We always acknowledge the International Court and precisely what we are doing is establishing a standstill period, but I am certain that in three years Nicaragua and Costa Rica will not need to have recourse to any court.") (Attachment 6.)

and principles of international law, the rights of Costa Rica on the San Juan River include the following:

(a) the perpetual right of free navigation for commercial purposes of Costa Rican boats and their passengers;
(b) the right for boats of Costa Rica to touch at any part of the banks of the river where the navigation is common, without paying any dues except such as may be established by agreement between the two Governments;
(c) the right to navigate the river in accordance with Article Second of the Cleveland Award;
(d) the right to navigate the San Juan River in official boats for supply purposes, exchange of personnel of the border posts along the right bank of the river with their official equipment, including the necessary arms and ammunitions, and for the purposes of protection, as established in the pertinent instruments;
(e) the right not to have navigation on the river obstructed or impaired at any point where Costa Rica is entitled to navigate.

7. In addition, Articles I and II of the 1956 Agreement provide as follows:

> "Article I
>
> The two Parties . . . shall collaborate to the best of their ability in order to carry out those undertakings and activities which require a common effort by both States and are of mutual benefit and, in particular, in order to facilitate and expedite traffic on the Pan American Highway and on the San Juan River within the terms of the Treaty of 15 April 1858 and its interpretation given by arbitration on 22 March 1888, and also in order to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other.
>
> Article II
>
> The two Parties shall, in so far as possible and with the utmost diligence, arrange for the supervision of their common border as a means of preventing the illegal entry of either weapons or armed groups from the territory of one of the Parties into the territory of the other . . ."

8. The facts underlying the present dispute may be simply stated. Nicaragua has — in particular since the late 1990s — imposed a number of restrictions on the navigation of Costa Rican boats and their passengers on the San Juan River. These restrictions are of a continuing character and include the following:

(a) the imposition of charges on Costa Rican boats and their passengers;

(b) the obligation to stop successively at each Nicaraguan military post on the Nicaraguan bank of the river to report the names of the passengers and to obtain authorization to navigate, or as the case may be to continue to navigate, on the river;
(c) the prohibition imposed by the Nicaraguan authorities on Costa Rica to navigate the San Juan River in official boats for supply purposes, exchange of personnel of the border posts along the right bank of the river, with their official equipment, including the necessary arms and ammunitions, and for purposes of protection, as established in the pertinent instruments; as well as the prohibition on Costa Rica to navigate the river in

accordance with Article Second of the Cleveland Award;

(d) the imposition of timetables for navigation on the river;
(e) limitations to free moorage along the banks of the river;

(f) other limitations to free and expeditious transit on the river.

9. In particular, and reserving the right to further particularize the various breaches of Costa Rica's rights, the following cases of Nicaraguan conduct may be instanced:

(a) Nicaragua denies that Costa Rican boats engaged in the commercial carriage of passengers or the provision of services are acting for the purposes of commerce within the meaning of Article VI of the Treaty of Limits as interpreted by the Cleveland Award and by the Central American Court of Justice.
(b) Nicaragua requires all Costa Rican boats entering the river to stop on the Nicaraguan river bank, and imposes charges on them for doing so. Those charges are US$4 for immigration charges, US$5 for a tourism card (which is charged irrespective of the purpose of the voyage) and US$20 for the use of "port facilities" to every Costa Rican vessel. These charges are imposed irrespective of any need to or use of facilities, moreover there is no infrastructure of any kind that may be considered as port facilities on the Nicaraguan bank of the river, with the exception of Castillo Viejo. Costa Rica has never agreed to these charges or charged Nicaraguan boats for mooring on the Costa Rican bank of the river.

(c) Since 15 July 1998, Nicaragua has claimed that Costa Rican public authorities and Costa Rican official boats cannot navigate the San Juan River for supply purposes, exchange of personnel of the border posts along the right bank of the river, with their official equipment, including the necessary arms and ammunitions, and for purposes of protection, without the express consent of the authorities of that country.

(d) On 28 September 2005, just after the end of the three-year standstill period under the Tovar-Caldera Agreement, the National Assembly of Nicaragua passed Resolution No. 17-2005 (the text of which is Attachment 7), threatening to impose economic sanctions against Costa Rica in the event of its bringing the present dispute to the Court; annexed to that Resolution is the text of a draft law which would impose an import tax of 35 per cent on all goods and services of Costa Rican origin.

10. Costa Rica seeks the cessation of this Nicaraguan conduct which prevents the free and full exercise and enjoyment of the rights that Costa Rica possesses on the San Juan River, and which also prevents Costa Rica from fulfilling its responsibilities under Article II of the 1956 Agreement and otherwise. In the event that Nicaragua imposes the economic sanctions referred to above, or any other unlawful sanctions, or otherwise takes steps to aggravate and extend the present dispute, Costa Rica further seeks the cessation of such conduct and full reparation for losses suffered.

PREVIOUS ATTEMPTS AT A DIPLOMATIC SETTLEMENT OF THE DISPUTE

11. Costa Rica has proposed many times to Nicaragua a diplomatic solution as well as the use of the available mechanisms of peaceful resolution of differences, including mediation through the Organization of American States and international arbitration. The Government of Nicaragua has rejected all those alternatives. The three-year standstill period agreed between the Parties (see paragraph 4 above) has now passed without any resolution of the problem.

REMEDIES REQUESTED BY COSTA RICA

12. For these reasons, and reserving the right to supplement, amplify or amend the present Application, as well as to request the Court to establish provisional measures which might be necessary to protect its rights and to prevent the aggravation of the dispute, Costa Rica requests the Court to adjudge and declare that Nicaragua is in breach of its international obligations as referred to in paragraph 1 of this Application in denying to Costa Rica the free exercise of its rights of navigation and associated rights on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has violated:

(a) the obligation to facilitate and expedite traffic on the San Juan River within the terms of the Treaty of 15 April 1858 and its interpretation given by arbitration on 22 March 1888;

(b) the obligation to allow Costa Rican boats and their passengers to navigate freely and without impediment on the San Juan River for commercial purposes, including the transportation of passengers and tourism;

(c) the obligation to allow Costa Rican boats and their passengers while engaged in such navigation to moor freely on any of the San Juan River banks without paying any charges, unless expressly agreed by both Governments;

(d) the obligation not to require Costa Rican boats and their passengers to stop at any Nicaraguan post along the river;

(e) the obligation not to impose any charges or fees on Costa Rican boats and their passengers for navigating on the river;

(f) the obligation to allow Costa Rica the right to navigate the river in accordance with Article Second of the Cleveland Award;

(g) the obligation to allow Costa Rica the right to navigate the San Juan River in official boats for supply purposes, exchange of personnel of the border posts along the right bank of the San Juan River, with their official equipment, including the necessary arms and ammunitions, and for the purposes of protection, as established in the pertinent instruments;

(h) the obligation to collaborate with Costa Rica in order to carry out those undertakings and activities which require a common effort by both States in order to facilitate and expedite traffic in the San Juan River within the terms of the Treaty of Limits and its interpretation given by the Cleveland Award, and other pertinent instruments;

(i) the obligation not to aggravate and extend the dispute by adopting

measures against Costa Rica, including unlawful economic sanctions contrary to treaties in force or general international law, or involving further changes in the régime of navigation and associated rights on the San Juan River not permitted by the instruments referred to above.

Further, the Court is requested to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred to in paragraph 10 above.

13. In accordance with the provisions of Article 31 of the Statute of the Court and Article 35 (1) of its Rules, the Government of the Republic of Costa Rica states its intention to designate an *ad hoc* judge.

14. The Minister for Foreign Affairs of Costa Rica has appointed as Agent for these proceedings the undersigned. It is requested that all communications of this case be notified to the Agent at the following address:

Embassy of the Republic of Costa Rica,
Laan Copes van Cattenburch 46,
2585 GB The Hague,
Netherlands.

29 September 2005.

Respectfully,

(Signed) Edgar UGALDE-ALVAREZ,
Ambassador of Costa Rica to the Netherlands,
Agent.

List of Attachments

1. **Costa Rica-Nicaragua, Treaty of Territorial Limits, San José, 15 April 1858.**
2. **Arbitral Award issued by the President of the United States of America, Grover Cleveland, 22 March 1888.**
3. **Costa Rica-Nicaragua, Agreement Supplementary to Article IV of the Pact of Amity, Washington, 9 January 1956.**
4. **Costa Rica-Nicaragua, Agreement (Tovar-Caldera Agreement), Alajuela, 26 September 2002.**
5. **Costa Rica-Nicaragua, Pact of Amity, Washington, 21 February 1949.**
6. **Statement by President Bolaños, as reported in *La Prensa* (Managua), 27 September 2002.**
7. **Resolution A.N. No. 17-2005 of the National Assembly of the Republic of Nicaragua, 28 September 2005.**

Attachment 1

Costa Rica-Nicaragua, Treaty of Territorial Limits, San José, 15 April 1858

Treaty of Limits between Costa Rica and Nicaragua, concluded 15 April 1858[1]

We, Máximo Jerez, Minister Plenipotentiary of the Government of the Republic of Nicaragua, and José María Cañas, Minister Plenipotentiary of the Government of the Republic of Costa Rica, having been entrusted by our respective Governments with the mission of adjusting a treaty of limits between the two Republics, which should put an end to all the differences which have obstructed the perfect understanding and harmony that must prevail among them for their safety and prosperity, and having exchanged our respective powers, which were examined by Hon. Señor Don Pedro R. Negrete, Minister Plenipotentiary of the Government of the Republic of Salvador, exercising the functions of fraternal mediator in these negotiations, who found them to be good and in due form, as we on our part also found good and in due form the powers exhibited by the said Minister, after having discussed with the necessary deliberation all the points in question, with the assistance of the representative of Salvador who was present, have agreed to and adjusted the following Treaty of Limits between Nicaragua and Costa Rica.

Article I

The Republic of Nicaragua and the Republic of Costa Rica declare in the most solemn and express terms that if for one moment they were about to enter into a struggle for reason of limits and for others which each one of the high contracting parties considered to be legal and matter of honor, now after having given each other repeated proofs of good understanding, peaceful principles, and true fraternity, they are willing to bind themselves, as they formally do, to secure that the peace happily re-established should be each day more and more affirmed between the Government and the people of both nations, not only for the good and advantage of Nicaragua and Costa Rica, but for the happiness and prosperity which, to a certain extent, our sisters, the other Central American Republics, will derive from it.

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[1] This is a literal transcription of the translation included in the *Argument on the Questions of the Validity of the Treaty of Limits between Costa Rica and Nicaragua and Other Supplementary Points Connected with It, Submitted to the Arbitration of the President of the United States of America, Filed on Behalf of the Government of Costa Rica by Pedro Pérez Zeledón, Its Envoy Extraordinary and Minister Plenipotentiary in the United States* (translated into English by J. L. Rodriguez, Washington, Gibson Bros., Printers and Bookbinders, 1887). *Source:* US National Archives, Record Group 76, Record of Boundary and Claims Commission and Arbitration, Costa Rica-Nicaragua Boundary Arbitration, NC-155, Entry 24.

Article II

The dividing line between the two Republics, starting from the Northern Sea, shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river up to point three English miles distant from Castillo Viejo, said distance to be measured between the exterior works of said castle and the above-named point. From here, and taking the said works as centre, a curve shall be drawn along said works, keeping at the distance of three English miles from them, in its whole length, until reaching another point, which shall be at the distance of two miles from the bank of the river on the other side of the castle. From here the line shall continue in the direction of the Sapoá river, which empties into the Lake of Nicaragua, and it shall follow its course, keeping always at the distance of two miles from the right bank of the San Juan river all along its windings, up to reaching its origin in the lake; and from there along the right shore of the said lake until reaching the Sapoá river, where the line parallel to the bank and shore will terminate. From the point in which the said line shall coincide with the Sapoá river — a point which, according to the above description, must be two miles distant from the lake — an astronomic straight line shall be drawn to the central point of the Salinas Bay in the Southern Sea, where the line marking the boundary between the two contracting Republics shall end.

Article III

Such surveys as may be required to locate this boundary, whether in whole or in part, shall be made by Commissioners appointed by the two Governments; and the two Governments shall agree also as to the time when the said survey shall be made. Said Commissioners shall have the power to somewhat deviate from the curve around the castle, from the line parallel to the banks of the river and the lake, or from the astronomic straight line between Sapoá and Salinas, if they find that natural landmarks can be substituted with advantage.

Article IV

The Bay of San Juan del Norte, as well as the Salinas Bay, shall be common to both Republics, and, therefore, both the advantages of their use and the obligation to contribute to their defence shall also be common. Costa Rica shall be bound, as far as the portion of the banks of the San Juan river which correspond to it is concerned, to contribute to its custody in the same way as the two Republics shall contribute to the defence of the river in case of external aggression; and this they shall do with all the efficiency within their reach.

Article V

As long as Nicaragua does not recover the full possession of all her rights in the port of San Juan del Norte, the use and possession of Punta de Castilla shall be common and equal both for Nicaragua and Costa Rica; and in the meantime, and as long as this community lasts, the boundary shall be the whole course of the Colorado river. It is furthermore stipulated that, as long as the said port of San Juan del Norte remains a *free* port, Costa Rica shall not charge Nicaragua any custom duties at Punta de Castilla.

Article VI

The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river, which is hereby declared to belong to Costa Rica. The vessels of both countries shall have the power to land indiscriminately on either side of the river at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments.

Article VII

It is agreed that the territorial division made by this treaty cannot be understood as impairing in any way the obligations contracted whether in public treaties or in contracts of canalization or public transit by the Government of Nicaragua previous to the conclusion of the present treaty; on the contrary, it is understood that Costa Rica assumes those obligations, as far as the portion which corresponds to its territory is concerned, without injury to the eminent domain and sovereign right which it has over the same.

Article VIII

If the contracts of canalization or transit entered into by the Government of Nicaragua previous to its being informed of the conclusion of this treaty should happen to be invalidated for any reason whatever, Nicaragua binds herself not to enter into any other arrangement for the aforesaid purposes without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of 30 days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory.

Article IX

Under no circumstances, and even in case that the Republics of Costa Rica and Nicaragua should unhappily find themselves in a state of war, neither of them shall be allowed to commit any act of hostility against the other, whether in the port of San Juan del Norte, or in the San Juan river, or the Lake of Nicaragua.

Article X

The stipulation of the foregoing article being essentially important for the proper custody of both the port and the river against foreign aggression, which would affect the general interests of the country, the strict performance thereof is left under the special guarantee which, in the name of the mediator Government, its Minister Plenipotentiary herein present is ready to give, and does hereby give, in use of the faculties vested in him for that purpose by his Government.

Article XI

In testimony of the good and cordial understanding which is established between the Republics of Nicaragua and Costa Rica, they mutually give up all claims against each other, on whatever ground they may be founded, up to the date of the present treaty; and in the same way the two contracting parties do hereby waive all claims for indemnification of damages which they might consider themselves entitled to present against each other.

Article XII

This treaty shall be ratified, and the ratifications thereof shall be exchanged, at Santiago de Managua within 40 days after it is signed.

In testimony whereof we have hereunto subscribed our names to the present instrument, executed in triplicate, together with the Hon. Minister of Salvador, and under the countersign of the respective secretaries of Legation, at the city of San José, in Costa Rica, on the 15th day of April, in the year of our Lord 1858.

Máximo JEREZ.
José M. CAÑAS.
Pedro Rómulo NEGRETE.

Manuel RIVAS,
Secretary of the Legation of Nicaragua.

Salvador GONZÁLEZ,
Secretary of the Legation of Costa Rica.

Florentino SOUZA,
Secretary of the Legation of Salvador.

ADDITIONAL ACT

The undersigned, Ministers of Nicaragua and Costa Rica, wishing to give public testimony of their high esteem and of their feeling of gratitude towards the Republic of Salvador, and the worthy representative of the same, Col. Don Pedro R. Negrete, have agreed that the treaty of territorial limits be accompanied with the following declaration, namely:

> "Whereas, the Government of Salvador has given to the Governments of Costa Rica and Nicaragua the most authentic testimony of its noble feelings, and of its high appreciation of the value and necessity of cultivating fraternal sympathy among these Republics, and has interested itself as efficiently as friendly in the equitable settlement of the differences which unhappily have existed between the high contracting parties, a settlement which has been secured by the two Legations, owing in great part to the estimable and efficient action of the Hon. Señor Negrete, Minister Plenipotentiary of the said Government, who proved to be the right person to accomplish the generous mediation for which he was appointed, and who has known perfectly well how to meet the intentions of his Government, and owing also to the important aid, to the learning and to the impartial suggestions of the same Minister during the discussion of the subject, we, the Representatives of Costa Rica and Nicaragua, in the name of our respective countries, do hereby fulfil the pleasant duty of declaring and recording here all the gratitude which we feel for the patriotism, high mindedness, fraternity, and benevolence characterizing the Government of Salvador."

In testimony whereof we have hereunto subscribed our names and signed this, in triplicate, in the presence of the Hon. Minister of Salvador, under the countersign of the respective Secretaries of Legation, in the city of San José, the capital of Costa Rica, on the 15th day of April, in the year of our Lord 1858.

Máximo Jerez.
José M. Cañas.

Manuel Rivas,
Secretary of the Legation of Nicaragua.

Salvador González,
Secretary of the Legation of Costa Rica.

COSTA RICA-NICARAGUA, TREATY OF TERRITORIAL LIMITS, SAN JOSÉ, 15 APRIL 1858

COSTA RICA-NICARAGUA, TRAITÉ DE LIMITES, SAN JOSÉ, LE 15 AVRIL 1858

[Original Spanish text]
[Texte original en espagnol]

Tratado [de 15 de abril de 1858] de limites territoriales con Nicaragua

Máximo Jerez, Ministro Plenipotenciario del Gobierno de la República de Nicaragua, y José María Cañas, Ministro Plenipotenciario del Gobierno de la República de Costa Rica, encargados por nuestros comitentes de celebrar un tratado de límites entre ambas Repúblicas, que ponga término á las diferencias que han retardado la mejor y más perfecta inteligencia y armonía que deben reinar entre ellas, para su común seguridad y engrandecimiento; habiendo verificado el canje de nuestros respectivos poderes, bajo el examen que de ellos hizo el honorable señor don Pedro Rómulo Negrete, Ministro Plenipotenciario del Gobierno de la Republica del Salvador, en ejercicio de las nobles funciones de mediador fraternal en estas negociaciones, quien los encontró en buena y debida forma; de la misma manera que por nuestra parte fueron hallados bastantes los que exhibió el señor Ministro, — discutidos con el detenimiento necesario los puntos convenientes, con la asistencia y auxilio del Representante del Salvador; hemos convenido y celebrado el siguiente:

Artículo 1

La República de Nicaragua y la República de Costa Rica declaran en los términos más expresos y solemnes: — que si por un momento llegaron á disponerse para combatir entre si por diferencias de limites y por razones que cada una de las Altas Partes Contratantes consideró legales y de honor, hoy después de repetidas pruebas de buena inteligencia, de principios pacíficos y de verdadera confraternidad, quieren y se comprometen formalmente á procurar que la paz, felizmente restablecida, se consolide cada día más y más entre ambos Gobiernos y entre ambos pueblos; no solamente para el bien y provecho de Nicaragua y Costa Rica, sino para la ventura y prosperidad que, en cierta manera, redunda en beneficio de nuestras hermanas las demás Repúblicas de Centro América.

Artículo 2

La línea divisoria de las dos Repúblicas, partiendo del mar del Norte, comenzará en la extremidad de Punta de Castilla en la desembocadura del río de San Juan de Nicaragua, y continuará marcándose con la margen derecha del expresado río, hasta un punto distante del Castillo Viejo, tres millas inglesas, medidas desde las fortificaciones exteriores de dicho Castillo hasta el indicado punto. De allí partirá una curva, cuyo centro serán dichas obras, y distará de él tres millas inglesas en toda su progresión, terminando en un punto que deberá distar dos millas de la ribera del río, aguas arriba del Castillo. De allí se continuará en dirección al río de Sapoá, que desagua en el Lago de Nicaragua, siguiendo un curso que diste siempre dos millas de la margen derecha del río de San Juan con sus circunvoluciones hasta su origen en el Lago, y de la margen derecha del propio Lago hasta el expresado río Sapoá, en donde terminará esta línea paralela á dichas riberas. Del punto en que ella coincida con el río de Sapoá, el que por lo dicho, debe distar dos millas del Lago, se tirará una recta astronómica hasta el punto céntrico de la Bahía de Salinas, en el mar del Sur, donde quedará terminada la demarcación del territorio de las dos Repúblicas Contratantes.

Articulo 3

Se practicarán las medidas correspondientes á esta línea divisoria, en el todo ó en parte, por comisionados de los dos Gobiernos, poniéndose estos de acuerdo para señalar el tiempo en que haya de verificarse la operación. Dichos comisionados tendrán la facultad de desviarse un tanto de la curva al rededor del Castillo, de la paralela á las márgenes del río y el Lago, ó de la recta astronómica entre Sapoá y Salinas; caso que en ello puedan acordarse para buscar mojones naturales.

Articulo 4

La Bahía de San Juan del Norte, así como la de Salinas, serán comunes á ambas Repúblicas, y de consiguiente lo serán sus ventajas y la obligación de concurrir á su defensa. También estará obligada Costa Rica, por la parte que le corresponde en las márgenes del río de San Juan, en los mismos términos que por tratados lo está Nicaragua, á concurrir á la guarda de él, del propio modo que concurrirán las dos Repúblicas á su defensa en caso de agresión exterior; y lo harán con toda la eficacia que estuviese á su alcance.

Articulo 5

Mientras tanto que Nicaragua no recobre la plena posesión de todos sus derechos en el Puerto de San Juan del Norte, la Punta de Castilla será de uso y posesión enteramente común, igual para Nicaragua y Costa Rica, marcándose para entre tanto dure esta comunidad, como límite de ella, todo el trayecto del río Colorado. Y además se estipula, que mientras el indicado puerto de San Juan del Norte haya de existir con la calidad de franco, Costa Rica no podrá cobrar á Nicaragua derechos de puerto en Punta de Castilla.

Articulo 6

La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del río San Juan desde su salida del Lago, hasta su desembocadura en el Atlántico; pero la República de Costa Rica tendrá en dichas aguas los derechos perpetuos de libre navegación, desde la expresada desembocadura hasta tres millas inglesas antes de llegar al Castillo Viejo, con objetos de comercio, ya sea con Nicaragua ó al interior de Costa Rica por los ríos de San Carlos ó Sarapiquí, ó cualquiera otra vía procedente de la parte que en la ribera del San Juan se establece corresponder á esta República. Las embarcaciones de uno ú otro país podrán indistintamente atracar en las riberas del río, en la parte en que la navegación es común, sin cobrarse ninguna clase de impuestos, á no ser que se establezcan de acuerdo entre ambos gobiernos.

Articulo 7

Queda convenido que la división territorial que se hace por este Tratado, en nada debe entenderse contrariando las obligaciones consignadas, ya sea en tratados políticos ó encontratos de canalización ó de tránsito celebrados por parte de Nicaragua con anterioridad al conocimiento del presente convenio; y antes bien se entenderá que Costa Rica asume aquellas obligaciones, en la parte que corresponde á su territorio, sin que en manera alguna se contraríe el dominio eminente y los derechos de soberanía que tiene en el mismo.

Articulo 8

Si los contratos de canalización ó de tránsito celebrados antes de tener el Gobierno de Nicaragua conocimiento de este convenio, llegasen a quedar insubsistentes por cualquiera causa, Nicaragua se compromete á no concluir otro sobre los expresados objetos sin oír antes la opinión del Gobierno de

Costa Rica acerca de los inconvenientes que el negocio pueda tener para los dos países; con tal que esta opinión se emita dentro de treinta días después de recibida la consulta, caso que el de Nicaragua manifieste ser urgente la resolución; y no dañándose en el negocio de los derechos naturales de Costa Rica, este voto será consultivo.

Articulo 9

Por ningún motivo, ni en caso y estado de guerra, en que por desgracia llegasen á encontrarse las Repúblicas de Nicaragua y Costa Rica, les será permitido ejercer ningún acto de hostilidad entre ellas en el puerto de San Juan del Norte, ni en el rió de este nombre y Lago de Nicaragua.

Articulo 10

Siendo lo estipulado en el artículo anterior esencialmente importante á la debida guarda del puerto y del río contra agresiones exteriores que afectarían los intereses generales del país, queda su estricto cumplimiento bajo la especial garantía que, á nombre del Gobierno mediador, está dispuesto á dar, y en efecto da, su Ministro Plenipotenciario presente, en virtud de las facultades que al intento declara estarle conferidas por su Gobierno.

Articulo 11

En testimonio de la buena y cordial inteligencia que queda establecida entre las Repúblicas de Nicaragua y Costa Rica, renuncian á todo crédito activo que entre sí tengan, por cualesquiera títulos, hasta la signatura del presente Tratado; é igualmente prescinden las Altas Partes Contratantes de toda reclamación por indemnizaciones á que se considerasen con derecho.

Articulo 12

Este tratado será ratificado, y sus ratificaciones cambiadas, dentro de cuarenta días de la signatura, en Santiago de Managua.

En fe de lo cual firmamos el presente, por triplicado, en unión del Honorable Señor Ministro del Salvador, refrendado por los respectivos Secretarios, en la ciudad de San José, capital de Costa Rica, á los quince días del mes de Abril del año del Señor de mil ochocientos cincuenta y ocho.

(f) Máximo Jerez.
(f) José M. Cañas.
(f) Pedro Rómulo Negrete.

Attachment 2

ARBITRAL AWARD ISSUED BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, GROVER CLEVELAND, 22 MARCH 1888

GROVER CLEVELAND,
PRESIDENT OF THE UNITED STATES OF AMERICA

TO WHOM IT SHALL CONCERN, GREETING:

The functions of Arbitrator having been conferred upon the President of the United States by virtue of a Treaty signed at the City of Guatemala on the 24th day of December, one thousand eight hundred and eighty-six, between the Republics of Costa Rica and Nicaragua, whereby it was agreed that the question pending between the contracting Governments in regard to the validity of their Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, should be submitted to the arbitration of the President of the United States of America; that if the Arbitrator's award should determine that the Treaty was valid, the same award should also declare whether Costa Rica has the right of navigation of the River San Juan with vessels of war or of the revenue service; and that in the same manner the Arbitrator should decide, in case of the validity of the Treaty, upon all the other points of doubtful interpretation which either of the parties might find in the Treaty and should communicate to the other party within thirty days after the exchange of the ratifications of the said Treaty of the 24th day of December, one thousand eight hundred and eighty-six;

And the Republic of Nicaragua having duly communicated to the Republic of Costa Rica eleven points of doubtful interpretation found in the said Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight; and the Republic of Costa Rica having failed to communicate to the Republic of Nicaragua any points of doubtful interpretation found in the said last-mentioned Treaty;

And both parties having duly presented their allegations and documents to the Arbitrator, and having thereafter duly presented their respective answers to the allegations of the other party as provided in the Treaty of the 24th day of December, one thousand eight hundred and eighty-six;

And the Arbitrator pursuant to the fifth clause of said last-named Treaty having delegated his powers to the Honorable George L. Rives, Assistant Secretary of State, who, after examining and considering the said allegations, documents and answers, has made his report in writing thereon to the Arbitrator;

Now therefore I, Grover Cleveland, President of the United States of America, do hereby make the following decision and award:

First. The above-mentioned Treaty of Limits signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.

Second. The Republic of Costa Rica under said Treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the River San Juan with vessels of war; but she may navigate said river with such vessels of the Revenue Service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment.

Third. With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua, I decide as follows:

1. The boundary line between the Republics of Costa Rica and Nicaragua, on the Atlantic side, begins at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April, 1858. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.

2. The central point of the Salinas Bay is to be fixed by drawing a straight line across the mouth of the Bay and determining mathematically the centre of the closed geometrical figure formed by such straight line and the shore of the Bay at low-water mark.

3. By the central point of Salinas Bay is to be understood the centre of the geometrical figure formed as above stated. The limit of the Bay towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba, nearly true South to the Westernmost portion of the land about Punta Sacate.

4. The Republic of Costa Rica is not bound to concur with the Republic of Nicaragua in the expenses necessary to prevent the Bay of San Juan del Norte from being obstructed; to keep the navigation of the River or Port free and unembarrassed, or to improve it for the common benefit.

5. The Republic of Costa Rica is not bound to contribute any proportion of the expenses that may be incurred by the Republic of Nicaragua for any of the purposes above mentioned.

6. The Republic of Costa Rica cannot prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, *provided* such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same. The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank of the River San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

7. The branch of the River San Juan known as the Colorado River must not be considered as the boundary between the Republics of Costa Rica and Nicaragua in any part of its course.

8. The right of the Republic of Costa Rica to the navigation of the River San Juan with men-of-war or revenue cutters is determined and defined in the Second Article of this award.

9. The Republic of Costa Rica can deny to the Republic of Nicaragua the right of deviating the waters of the River San Juan in case such deviation will result in the destruction or serious impairment of the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same.

10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of

the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for inter-oceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the Treaty, should be more than "advisory" or "consultative". It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

In testimony whereof, I have hereunto set my hand and have caused the Seal of the United States to be hereunto affixed.

Done in triplicate at the City of Washington, on the twenty-second day of March, in the year one thousand eight hundred and eighty-eight, and of the independence of the United States the one-hundred and twelfth.

Grover Cleveland,
By the President.

T. F. Bayard,
Secretary of State.

Attachment 3

COSTA RICA-NICARAGUA, AGREEMENT SUPPLEMENTARY TO ARTICLE IV OF THE PACT OF AMITY, WASHINGTON, 9 JANUARY 1956*

No. 24844

NICARAGUA AND COSTA RICA

Agreement pursuant to Article IV of the Pact of Amity, signed on 21 February 1949 (with a declaration by the Government of Costa Rica). Signed at Washington on 9 January 1956

Authentic text: Spanish.
Registered by Nicaragua on 1 July 1987.

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[*] The following text, as submitted by Costa Rica, is taken from the United Nations, *Treaty Series*, Vol. 1465, pp. 233-237. *[Note by the Registry.]*

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENTS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA PURSUANT TO ARTICLE IV OF THE PACT OF AMITY SIGNED ON 21 FEBRUARY 1949[2]

The Governments of the Republics of Costa Rica and Nicaragua, reaffirming their desire to maintain the close friendship as befits two fraternal and neighbouring peoples, and to avoid in future any dispute which may disrupt their fraternal relations; desiring to implement the provisions of article IV of the Pact of Amity of 21 February 1949[2] concerning the best manner of putting into practice the provisions of the Convention concerning the Duties and Rights of States in the event of Civil Strife[3] through a bilateral agreement; recognizing the effective efforts to bring about peace made by the Council of the Organization of American States acting provisionally as the Organ of Consultation, which, in its resolution II of 24 February 1955, appealed to the two Governments to sign the aforesaid Agreement; have agreed to enter into this Agreement in the presence of the Chairman and other Members of the Council of the Organization of American States. To this end, His Excellency, the President of Costa Rica, Don José Figueres, and His Excellency the President of Nicaragua, General Anastasio Somoza, have designated the following Plenipotentiaries:

For the Republic of Costa Rica: His Excellency Ambassador Fernando Fournier, Representative of Costa Rica on the Council of the Organization of American States;

For the Republic of Nicaragua: His Excellency Ambassador Dr. Guillermo Sevilla Sacasa, Representative of Nicaragua on the Council of the Organization of American States;

who, having shown their full powers, found in good and due form, agree to sign this Agreement:

I

The two Parties, acting in the spirit which should move the members of the Central American family of nations, shall collaborate to the best of their ability in order to carry out those undertakings and activities which require a common effort by both States and are of mutual benefit and, in particular, in order to facilitate and expedite traffic on the Pan American Highway and on the San Juan River within the terms of the Treaty of 15 April 1858[4] and its interpretation given by arbitration on 22 March 1888[5], and also in order to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other.

II

The two Parties shall, in so far as possible and with the utmost diligence, arrange for the supervision of their common border as a means of preventing the illegal entry of either weapons or armed groups from the territory of one of the Parties into the territory of the other. The authorities of the two Governments, and, in particular, the border authorities, shall exchange, as fully as possible, any information which may come to their attention and which might help to avoid such incidents.

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[1] Came into force on 23 May 1960 by the exchange of the instruments of ratification, which took place at Washington, in accordance with article XV.

[2] See p. 217 of this volume.

[3] League of Nations, *Treaty Series*, Vol. CXXXIV, p. 45.

[4] *British and Foreign State Papers*, Vol. 48, p. 1049.

[5] *Ibid.*, Vol. 79, p. 555.

III

Each Party undertakes to apply the necessary measures to prevent revolutionary movements from being fomented or from rising up in its territory against the other Party.

Each Party undertakes to apply all measures to prevent any person, national or alien, operating anywhere under its jurisdiction from participating in or abetting any subversive undertaking, terrorist act or attack against the Head of State of the other Party, the other members of the executive authorities, the high civil or military authorities, candidates for those positions and their immediate family members, irrespective of whether relations maintained are between the two Governments.

IV

The contribution, supply or provision of weapons, war material or equipment, the training, enlistment, organization or transport of personnel, or the acquisition or supply of monies for the aforesaid purposes, together with any other similar acts, shall be considered as participation for purposes of the preceding article.

V

The two Parties agree to apply, in respect of asylees, articles I, II, III, V, VI, VII, VIII, IX and X of the Convention on Territorial Asylum[1], signed at the Tenth Inter-American Conference, the text of which follows:

> "*Article I.* Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without through the exercise of this right, giving rise to complaint by any other State.
>
> *Article II.* The respect which, according to international law, is due the jurisdictional right of each State over the inhabitants in its territory, is equally due, without any restriction whatsoever, to that which it has over persons who enter it proceeding from a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offenses.
>
> Any violation of sovereignty that consists of acts committed by a government or its agents in another State against the life or security of an individual, carried out on the territory of another State, may not be considered attenuated because the persecution began outside its boundaries or is due to political considerations or reasons of state.
>
> *Article III.* No State is under the obligation to surrender to another State, or to expel from its own territory, persons persecuted for political reasons or offenses.

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[1] United Nations, *Treaty Series*, Vol. 1438, No. I-24378.

Article V. The fact that a person has entered into the territorial jurisdiction of a State surreptitiously or irregularly does not affect the provisions of this Convention.

Article VI. Without prejudice to the provisions of the following articles, no State is under the obligation to establish any distinction in its legislation, or in its regulations or administrative acts applicable to aliens, solely because of the fact that they are political asylees or refugees.

Article VII. Freedom of expression of thought, recognized by domestic law for all inhabitants of a State, may not be ground of complaint by a third State on the basis of opinions expressed publicly against it or its government by asylees or refugees, except when these concepts constitute systematic propaganda through which they incite to the use of force or violence against the government of the complaining State.

Article VIII. No State has the right to request that another State restrict for the political asylees or refugees the freedom of assembly or association which the latter State's internal legislation grants to all aliens within its territory, unless such assembly or association has as its purpose fomenting the use of force or violence against the government of the soliciting State.

Article IX. At the request of the interested State, the State that has granted refuge or asylum shall take steps to keep watch over or to intern at a reasonable distance from its border, those political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it.

Determination of the reasonable distance from the border, for the purpose of internment, shall depend upon the judgment of the authorities of the State of refuge.

All expenses incurred as a result of the internment of political asylees and refugees shall be chargeable to the State that makes the request.

Article X. The political internees referred to in the preceding article shall advise the government of the host State whenever they wish to leave its territory. Departure therefrom will be granted, under the condition that they are not to go to the country from which they came; and the interested government is to be notified."

VI

Extradition shall not be justified where the offence is political or where it is an offence under ordinary law but is classified by the solicited State as political in nature, except where it involves homicide or another type of personal attack against the Head of State or any other member of the public authorities.

VII

Each Party undertakes not to appoint asylees in its territory to political or military positions.

VIII

Each Party undertakes not to grant any form of assistance to anyone who in any way attempts to disrupt public order in the territory of the other Party

IX

Each Party undertakes to prohibit, within its jurisdiction, any trafficking or trade in weapons, military equipment or ammunition by unauthorized persons or entities.

X

The two Parties agree that any materials mentioned in the preceding article which are found in the jurisdiction of either of the Parties and whose presence there is in violation of the provisions of the article must be immediately confiscated by that Farty, and their export must be prevented.

XI

The two Parties agree that any reference made in this Agreement or in the Interamerican Convention concerning the Duties and Rights of Stales in the event of Civil Strife to "arms or war material" shall include military aircraft, and to civil aircraft where there is reason to believe that they will be used for the purpose of instigating or contributing to civil strife in the territory of either of the Parties. They further agree that references to the term "vessels", in the Interamerican Convention concerning the Duties and Rights of States in the event of Civil Strife shall also include aircraft of all types, whether military or civil.

XII

The two Parties agree to appoint, within 30 days from the date of entry into force of this Agreement, two Border Committees, one whose jurisdiction shall extend from the thalweg of the Pizote River — which flows into the lake Nicaragua and constitutes the boundary between the departments of Rivas and Río San Juan, on the Costa Rican border — to the Caribbean Sea; and the other, with jurisdiction from the thalweg of the Pizote River to the Pacific Ocean. These Committees shall each comprise four officers of the armed forces of the Parties, two of whom shall be appointed by one Party and two by the other. The Parties shall endeavour to fill any vacancy in the Committees within 30 days following the date on which it occurs. The members of the Committees shall reside, during their term of service, in the zone under their Committee's jurisdiction.

XIII

The Border Committees shall be responsible for co-ordinating joint supervision of the common border and investigating any incident liable to disturb the harmony which should exist between the authorities and inhabitants of the two Parties, and they shall make every effort to prevent such incidents from occurring and seek to resolve them amicably should they arise, without prejudice to the possibility that they may be handled through direct negotiation between the Governments of the Parties or referred to the Commission of Investigation and Conciliation established by the two Governments in accordance with the American Treaty on Pacific Settlement (Pact of Bogotá)[1].

XIV

This Agreement shall be deposited with the Pan American Union, which shall transmit authentic certified copies to the Signatory Governments, to the other Governments of the States members of the Organization of American States and to the Secretary-General of the United Nations.

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[1] United Nations, *Treaty Series*, Vol. 30, p. 55.

XV

This Agreement shall be ratified and shall enter into force when the ratifications are deposited with the Pan American Union, which shall communicate each deposit to the other Signatory Government. Such notification shall be considered as an exchange of ratifications.

IN WITNESS WHEREOF the above-mentioned Plenipotentiaries sign and seal this Agreement at the Pan American Union, in the presence of the Chairman and other Members of the Council of the Organization of American States in the city of Washington, D.C., on 9 January 1956.

For Costa Rica,
Fernando FOURNIER.

For Nicaragua,
Guillermo SEVILLA SACASA.

The Republic of Costa Rica declares its acceptance of article VI of this Agreement, which amends the régime of asylum laid down in the Convention adopted at the Tenth Inter-American Conference, in as much as the amendment is based on article 11, paragraph 7, of the Costa Rican Penal Code.

Attachment 4

COSTA RICA-NICARAGUA, AGREEMENT (TOVAR-CALDERA AGREEMENT), ALAJUELA, 26 SEPTEMBER 2002*

No. 38916

COSTA RICA AND NICARAGUA

Tovar-Caldera Agreement between Costa Rica and Nicaragua. Alajuela, 26 September 2002

Entry into force: 26 September 2002 by signature, in accordance with its provisions.

Authentic text: Spanish.

Registration with the Secretariat of the United Nations: Costa Rica, 23 October 2002.

*** The following text, as submitted by Costa Rica, is taken from the United Nations, *Treaty Series*, Vol. 2197, pp. 78-79. *[Note by the Registry.]***

[TRANSLATION — TRADUCTION]

THE MINISTERS FOR FOREIGN AFFAIRS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA,

Expressing their unswerving will and determination to develop and strengthen their ties of brotherhood and good-neighbourliness, as countries united by strong historical, geographical, cultural and human ties;

Considering the importance to our peoples of economic integration projects such as the customs union, the free-trade agreement between Central America and the United States of America, the Puebla-Panamá Plan and the association agreement between Central America and the European Union, among other significant regional initiatives;

Noting the importance of deepening co-operation between the two States for the sustainable development of the border region, including the establishment of a special development fund;

Bearing in mind that the strengthening of our good-neighbourly relations is essential to the energetic promotion of Central American economic and cultural integration and the sustainable human development of our countries for the benefit of our peoples;

Convinced that economic integration projects and the creation of an appropriate climate for investment, trade and international co-operation can be further promoted insofar as both parties resort to peaceful means of settlement of any situations that may affect the successful course of their relations; and

Confident that the fraternal spirit that unites our peoples and the renewed bilateral relations will allow for the strengthening of a broad area of understanding and harmony to our mutual advantage,

Have agreed as follows:

1. The Governments of Costa Rica and Nicaragua shall, from today's date, as a matter of cross-border comity, eliminate any charge that might hinder free movement across their common border by means of a temporary entry or exit permit.

2. The Government of Costa Rica expresses its willingness to eliminate the fee for visas granted to Nicaraguan citizens carrying an ordinary passport as from 1 January 2003. If the elimination of the visa fee requires an amendment to the existing law, the Government of Costa Rica shall promote and support such an amendment, on the understanding that the Legislative Assembly shall take a decision in accordance with its sovereignty. As soon as the Government of Costa Rica eliminates the visa fee, the Government of Nicaragua shall also eliminate, at the national level, the charge for tourist cards and migratory services for Costa Rican citizens. To those ends, the Governments of Costa Rica and Nicaragua shall immediately undertake the appropriate technical studies.

3. The Government of Nicaragua undertakes to maintain, for a period of three years from today's date, the legal status existing on today's date with respect to its declaration of acceptance of the jurisdiction of the International Court of Justice. For its part, during the same period, the Government of Costa Rica will not engage in initiating any action or any international protest

against Nicaragua neither before the Court nor before any other authority on any matter or protest mentioned in treaties or agreements currently in force between both countries.

4. Nothing in the preceding paragraphs shall be interpreted or presumed to be a renunciation or as a diminishing of rights that each Party has and retains in accordance with treaties currently in force in the area of international law.

In witness whereof, we sign, with validity and immediate effect, in the city of Alajuela, Republic of Costa Rica, two original texts, both in the Spanish language and equally valid, on 26 September 2002.

Roberto TOVAR FAJA,
Minister of Foreign Affairs and
Worship of the Republic of Costa Rica.

Norman CALDERA CARDENAL,
Minister of Foreign Affairs
of the Republic of Nicaragua.

Attachment 5

COSTA RICA-NICARAGUA, PACT OF AMITY, WASHINGTON, 21 FEBRUARY 1949*

No. 24843

NICARAGUA AND COSTA RICA

Pact of Amity (with annex). Signed at Washington on 21 February 1949

Authentic text: Spanish.
Registered by Nicaragua on 1 July 1987.

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* The following text, as submitted by Costa Rica, is taken from the United Nations, *Treaty Series*, Vol. 1465, pp. 221-223. *[Note by the Registry.]*

[TRANSLATION — TRADUCTION]

PACT[1] OF AMITY BETWEEN THE GOVERNMENTS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA

The Governments of the Republics of Costa Rica and Nicaragua, having taken the measures necessary to carry out, faithfully and in full, each and every one of the provisions contained in the Resolution of the Provisional Organ of Consultation approved on December 24, 1948, the text of which is annexed to the present Pact of Amity, and is fully accepted by the signatory Governments, reiterating their firm resolve to continue taking all measures necessary, without restriction, to observe fully and faithfully each and all of the provisions and recommendations contained in the said Resolution; desiring to put an end to the situation that has arisen between the two States, and at the same time solemnly to reaffirm their desire to maintain the closest friendship and to strengthen the fraternal bonds which have historically characterized their relations, and wishing to avail themselves of the offer made to them by the Council of the Organization of American States, acting as a Provisional Organ of Consultation, of its good offices in attaining this objective, have agreed to enter into the present Pact of Amity in the presence of the Chairman and other Members of the Council. To this end, His Excellency the President of the Government of Costa Rica, Don José Figueres, and His Excellency the President of Nicaragua, Dr. Victor M. Roman y Reyes, have designated the following Plenipotentiaries:

For the Republic of Costa Rica: His Excellency Ambassador Mario A. Esquivel, Representative of Costa Rica on the Council of the Organization of American States;

For the Republic of Nicaragua: His Excellency Ambassador Dr. Guillermo Sevilla Sacasa, Representative of Nicaragua on the Council of the Organization of American States;

who having exhibited their respective full powers, found in good and due form, agree to sign the present Pact.

I

The Governments of Costa Rica and Nicaragua both affirm that the events brought before the Council of the Organization of American States, acting as a Provisional Organ of Consultation, should not break the fraternal friendship of the two peoples, manifested in their common history and based on the solidarity which binds together the nations of the Hemisphere.

II

The Governments of Costa Rica and Nicaragua agree to prevent the repetition in the future of events of this nature, through the constant application by both Governments of effective measures for the safeguarding of the principles of non-intervention and continental solidarity, as well as for the faithful observance of the treaties, conventions and other inter-American instruments intended to ensure peace and good neighbourliness.

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[1] Came into force on 15 July 1949 by the exchange of the instruments of ratification, which took place at Washington, in accordance with paragraph VII.

III

The Governments of Costa Rica and Nicaragua recognize the existing obligation of each of them, under the Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro[1] and under Article 20 of the Charter of the Organization of American States[2], to submit disputes that may arise between them to the methods for the peaceful settlement of international conflicts.

In order to carry out this high purpose, both Governments agree to apply the American Treaty on Pacific Settlement, known as the Pact of Bogotá[3] recognizing that Treaty as having full validity as to disputes between them even before it is formally ratified and enters in consequence into effect between all the American Republics.

IV

The Governments of Costa Rica and Nicaragua likewise undertake to reach an agreement as to the best manner of putting into practice the provisions of the Convention concerning the Duties and Rights of States in the Event of Civil Strife[4], in cases contemplated by that Convention, so that it may be applied immediately whenever a situation of this kind arises, in the manner provided for in the said agreement, especially with respect to measures for the control and supervision of frontiers, as well as with respect to any other measure intended to prevent the organization or existence of any revolutionary movement against the Government of either of the two Parties in the territory of the other.

V

The Governments of Costa Rica and Nicaragua acknowledge and applaud the action of the Council of the Organization of American States, constituted as a Provisional Organ of Consultation, which has culminated in the present Pact reaffirming the fraternal relations between Costa Rica and Nicaragua.

VI

The Pan American Union shall transmit authentic certified copies of the original of the present Pact to the Signatory Governments, to the other Governments of the States members of the Organization, and to the Secretary-General of the United Nations.

VII

The present Pact shall be ratified and shall enter into force when the ratifications are deposited with the Pan American Union, which shall communicate each deposit to the other Signatory State. Such notification shall be considered as an exchange of ratifications.

IN WITNESS WHEREOF, the Plenipotentiaries above mentioned sign and seal the present Pact at the Pan American Union, in the presence of the Chairman and other Members of the Council of the Organization of American States, in the City of Washington, D.C., this 21st day of February, 1949.

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[1] United Nations, *Treaty Series*, Vol. 21, p. 77.

[2] *Ibid.*, Vol. 119, p. 3.

[3] *Ibid.*, Vol. 30, p. 55.

[4] League of Nations, *Treaty Series*, Vol. CXXXIV, p. 45.

For Costa Rica,
Mario A. ESQUIVEL.

For Nicaragua,
Guillermo SEVILLA SACASA.

ANNEX

RESOLUTION OF THE COUNCIL OF THE ORGANIZATION OF AMERICAN STATES ACTING AS A PROVISIONAL ORGAN OF CONSULTATION APPROVED AT THE MEETING OF DECEMBER 24, 1948

The Council of the Organization of American States, acting as a Provisional Organ of Consultation, after studying the detailed report of the Committee that was in Costa Rica and Nicaragua for the purpose of investigating the facts and antecedents of the situation created between those sister Republics,

Resolves:

I. To request the Governments of Costa Rica and Nicaragua, in compliance with the Inter-American Treaty of Reciprocal Assistance, to give full assurances to the Provisional Organ of Consultation that they will immediately abstain from any hostile act toward each other.

II. To make known, with due respect to the Government of Nicaragua, that, in the light of data gathered by the Committee of Information especially appointed for the purpose, that Government could and should have taken adequate measures at the proper time for the purpose of preventing: *(a)* the development, in Nicaraguan territory, of activities intended to overthrow the present régime in Costa Rica, and *(b)* the departure from Nicaraguan territory of revolutionary elements who crossed the frontier and today are prisoners or are still fighting against the Government of Costa Rica.

III. To make known, with due respect to the Government of Costa Rica, that it can and should take adequate measures to rid its territory of groups of nationals or foreigners, organized on a military basis with the deliberate purpose of conspiring against the security of Nicaragua and other sister Republics, and of preparing to fight against their Governments.

IV. To request very respectfully that both Governments, by every available means, faithfully observe the principles and rules of non-intervention and solidarity contained in the various inter-American instruments signed by them.

V. To continue in consultation until positive assurances have been received from the Governments of Costa Rica and Nicaragua, that, as they are assuredly disposed to do, they will adhere strictly to the lofty principles and rules that constitute the juridical basis of American international life.

VI. To recommend that all American Governments actively co-operate toward the best observance of the principles which inspire this Resolution.

VII. To inform all States Members of the Organization of the steps taken in this case.

Attachment 6

STATEMENT BY PRESIDENT BOLAÑOS, AS REPORTED IN *LA PRENSA* (MANAGUA), 27 SEPTEMBER 2002

Official translation

I, Thais Caroline Pardo, M.A., Official Translator for the Costa Rican Ministry of Foreign Affairs, appointed to this position by then president Miguel Angel Rodriguez in Agreement number 25-A-J, published in the Official Registry *La Gaceta* No. 67 on 8 April 2002, proceed to translate the following document into English to the best of my ability* :

La Prensa (Newspaper/Nicaragua)

Saturday, 27 September 2002

The San Juan Frozen

- Nicaragua and Costa Rica agree to suspend for three years claims and lawsuits regarding the San Juan River.
- Bolaños predicts that at the end of this term neither neighbouring country will need to resolve their differences in the courts.

By Consuelo Sandoval,
consuelo.sandoval@laprensa.com.ni

The Government of Costa Rica undertook yesterday to set aside for three years any action or claims against Nicaragua in the international courts of justice over disagreements related with the San Juan River, located in Nicaraguan territory.

This moratorium, agreed to by the Presidents of Nicaragua and Costa Rica, Abel Pacheco and Enrique Bolaños, is to provide more opportunity for dialogue and to strengthen the friendship between both nations, confirmed Nicaraguan Foreign Minister Norman Caldera.

The bilateral agreement has seven points and was signed during an extraordinary summit of the Central American presidents in Alajuela, Costa Rica, where Nicaragua also committed to freeze for three years its actions in response to an eventual accusation at the International Court at The Hague.

President Bolaños stated, in San José, that "we always acknowledge the International Court and precisely what we are doing now is establishing a standstill period, but I am certain that in three years Nicaragua and Costa Rica will not need to have recourse to any court".

The declaration by both Governments states that "Nothing in this Agreement shall be interpreted or prejudged as being a renunciation of positions or a relinquishment or weakening of the rights which each of the Parties holds and retains in accordance with existing treaties in the framework of international law."

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* Seal and signature not reproduced. *[Note by the Registry.]*

What Costa Rica and Nicaragua immediately eliminated are their charges for bordering vicinal transit, which depends on vicinal permits.

In other business, the Central American presidents subscribed an agreement to establish the headquarters of the regional energy regulator entities in Guatemala, and negotiate the location of the electrical companies in El Salvador or Honduras.

Foreign Minister Caldera informed that all of isthmus's presidents agreed to modernize the Central American Economic Integration Bank (BCIE) by 1 January 2003 in order to present a united front during the Free Trade Agreement negotiations with the United States (CAFTA).

The reservation

Nicaragua rejected the jurisdiction of the International Court of Justice at The Hague for the San Juan River case originating on treaties or arbitral awards emitted before 31 December 1901.

During this period, the Cañas-Jerez Treaty of 1858 and the Cleveland Award of 1888 were subscribed, establishing Nicaragua's sovereignty over the San Juan River and Costa Rica's right to navigate on the river only for commercial purposes.

Costa Rica and Nicaragua agreed, yesterday, to a standstill period of three years, with the hope that afterwards it will not be necessary to have recourse to any court, as explained by President Enrique Bolaños.

No more fees

Nicaragua and Costa Rica agreed to eliminate immigration charges starting next January 1st. Nicaraguans would cease to pay the 20 dollar visa fee to Costa Rica and Costa Ricans would not need to pay the immigration card to Nicaragua.

STATEMENT BY PRESIDENT BOLAÑOS, AS REPORTED IN *LA PRENSA* (MANAGUA), 27 SEPTEMBER 2002

DÉCLARATION DU PRÉSIDENT BOLAÑOS RAPPORTÉE PAR *LA PRENSA* (MANAGUA), 27 SEPTEMBRE 2002

[Original Spanish text]
[Texte original en espagnol]

La Prensa

Viernes, 27 de septiembre del 2002

El San Juan congelado

- Nicaragua y Costa Rica acuerdan suspender durante tres años los reclamos y demandas sobre el río nicaragüense
- Bolaños pronostica que al término de ese plazo, ninguno de los dos países vecinos necesitará acudir a las cortes

Consuelo Sandoval,
consuelo.sandoval@laprensa.com.ni

El gobierno de Costa Rica se comprometió ayer a prescindir durante tres años de acciones o reclamos en las cortes internacionales de justicia contra Nicaragua, por desavenencias relacionadas con el Río San Juan, situado en territorio nicaragüense.

La moratoria, acordada por los presidentes de Costa Rica y Nicaragua, Abel Pacheco y Enrique Bolaños, es para dar más oportunidades al diálogo y fortalecer la amistad entre las dos naciones, confirmó el canciller nicaragüense Norman Caldera.

El acuerdo bilateral tiene siete puntos, y fue suscrito durante la reunión extraordinaria de presidentes de Centroamérica en Alajuela, Costa Rica, donde Nicaragua también se comprometió a congelar durante tres años sus acciones ante una eventual acusación en la Corte Internacional de La Haya.

El presidente Bolaños declaró en San José que "siempre reconocemos a la Corte Internacional y lo que estamos haciendo precisamente es dar un compás de espera, pero estoy seguro que dentro de tres años Nicaragua y Costa Rica no vamos a necesitar acudir a ninguna corte".

La declaración de los dos gobiernos precisa que "nada de lo dispuesto podrá interpretarse o prejuzgarse como renuncia de posiciones o renuncia o menoscabo alguno de los derechos que cada uno tiene y conserva, de acuerdo con los tratados y el derecho internacional".

Lo que Costa Rica y Nicaragua eliminaron de inmediato son los cobros al tránsito vecinal fronterizo, que depende de permisos vecinales.

En otro orden, todos los mandatarios de Centroamérica suscribieron un acuerdo para establecer la sede de los entes regionales reguladores de energía en Guatemala y negociar la localización en El Salvador o Honduras de las empresas eléctricas.

El canciller Caldera informó que los presidentes del istmo acordaron modernizar el Banco Centroamericano de Integración Económica (BCIE) y lograr una sola posición frente a Estados Unidos en las negociaciones del Tratado de Libre Comercio (TLC), a más tardar el primero de enero del 2003.

La reserva

Nicaragua desconoció la jurisdicción de la Corte Internacional de Justicia de La Haya, en el caso del Río San Juan, amparándose en tratados o sentencias arbitrales emitidos antes del 31 de diciembre de 1901.

En esa época fueron suscritos el Tratado Cañas-Jerez, de 1858, y el Laudo Cleveland, de 1888, que establecen la soberanía de Nicaragua sobre el Río San Juan y el derecho de Costa Rica a la navegación únicamente con objetos de comercio.

Costa Rica y Nicaragua acordaron ayer un compás de espera de tres años, con la esperanza de que después ya no necesiten recurrir a ninguna corte, según explicó el presidente Enrique Bolaños.

Fuera cobros

Nicaragua y Costa Rica acordaron eliminar cobros migratorios, a partir del primero de enero próximo. Los nicas dejarían de pagar 20 dólares por visa a Costa Rica y los ticos ya no pagarían tarjeta migratoria a Nicaragua.

Attachment 7

RESOLUTION A.N. NO. 17-2005 OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA, 28 SEPTEMBER 2005

Official translation

I, Natasha McIver, Official Translator of the Ministry of Foreign Affairs of the Republic of Costa Rica, appointed under Agreement No. 177 of 4 November 1993, published in *La Gaceta* on 10 January 1994, do hereby certify that the document translated from Spanish into English reads as follows*:

NATIONAL ASSEMBLY

RESOLUTION A.N. NO. 17-2005

THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

CONSIDERING:

I

That several legislators of the Legislative Assembly of the Republic of Costa Rica have presented a request in order that the Government of that country bring a lawsuit against Nicaragua before the International Court of Justice in The Hague.

II

That the aforementioned request is an aggression on the national territory that gravely affects the sovereignty of Nicaragua and violates the Cañas-Jeréz Treaty and the Cleveland Award.

III

That, in accordance with Article 1 of our Political Constitution, it is the duty of all Nicaraguans to preserve and defend those rights.

DECLARES:

1. In accordance with the Cañas-Jeréz Treaty of 15 April 1858, the Cleveland Award of 22 March 1888, the Central American Court Sentence of 30 September 1916, the Political Constitution of the Republic of Nicaragua, the San Juan River is a national river, its entire length runs through Nicaraguan territory and Nicaragua has exclusively the dominion and sovereign jurisdiction from its source in the Lake of Nicaragua to its mouth in the Atlantic Ocean.

2. These same international instruments recognize and guarantee the Republic of Nicaragua exclusive sovereignty over the San Juan River since it is not shared with any other country. It is the Republic of Nicaragua's competence to exercise the attributes of Sovereignty such as the right to defense, security, maintaining public order.

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* Seal and signature not reproduced. *[Note by the Registry.]*

3. The sister Republic of Costa Rica, in accordance with Article VI of the Cañas-Jeréz Treaty, only has rights of free navigation from its mouth up to within three miles of Castillo Viejo, provided it is for purposes of commerce.

4. Should international procedures be initiated, the National Assembly of the Republic of Nicaragua, recurring to international law, shall, in response, take the steps it deems necessary, such as approving a special tax on goods and services of Costa Rican origin that defrays expenses and costs incurred in the defense of this aggression on our Sovereignty.

5. This declaration shall be sent to the Legislative Assembly of the Republic of Costa Rica through the appropriate channels.

Issued in the city of Managua on the twenty-eighth day of the month of September of two thousand and five.

(Signed) René NUÑEZ TÉLLEZ,
President,
National Assembly.

(Signed) María Auxiliadora ALEMÁN ZEAS,
First Secretary,
National Assembly.

Resolution A.N. No. 17-2005 of the National Assembly of the Republic of Nicaragua

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Résolution A.N. nº 17-2005 de l'Assemblée nationale de la Républi du Nicaragua

[Spanish transcription, as submitted by Costa Rica, of the original text]
[Transcription en espagnol de l'original, telle que soumise par le Costa

ASAMBLEA NACIONAL

RESOLUCIÓN A.N. NO. 17-2005

LA ASAMBLEA NACIONAL DE LA REPUBLICA DE NICARAGUA

CONSIDERANDO:

I

Que varios legisladores de la Asamblea Legislativa de la República de Costa Rica para que el Gobierno de ese país concurra ante la Corte Internacional de Justicia de La Haya demandando a Nicaragua.

II

Que dicha solicitud es una agresión al territorio nacional, que afecta gravemente la soberanía de Nicaragua y violenta el Tratado Cañas-Jeréz y el Laudo Cleveland.

III

Que de conformidad al artículo 1° de nuestra Constitución Política, es deber de todos los nicaragüenses preserva y defender esos derechos.

DECLARA:

1. De conformidad al Tratado Cañas-Jeréz del 15 de abril de 1858, el Laudo Cleveland del 22 de marzo de 1888, la Sentencia de la Corte Centroamericana de Justicia del 30 de septiembre de 1916, la Constitución Política de la República de Nicaragua, el Río San Juan es un río nacional, corre en territorio nicaragüense durante todo su curso y Nicaragua tiene exclusivamente el dominio y sumo imperio desde su nacimiento en el lago de Nicaragua hasta su desembocadura en el Océano Atlántico.
2. Esos mismos instrumentos internacionales, reconocen y garantizan a la República de Nicaragua la exclusiva soberanía sobre el Río San Juan, ya que no es compartida con ningún otro país. Le compete a la República de Nicaragua, el ejercicio de los atributos de la Soberanía, tales como el derecho de defensa, la seguridad, el mantenimiento del orden público.
3. La hermana República de Costa Rica de conformidad al Arto. Sexto del Tratado Caños-Jeréz, tiene únicamente derechos de libre navegación desde su desembocadura hasta tres millas inglesas antes de llegar al Castillo Viejo, siempre y cuando sea con objetos de comercio.
4. En caso que se entablen juicios internacionales la Asamblea Nacional de la República de Nicaragua, haciendo uso del Derecho Internacional, tomará las medidas de respuesta que considere necesarias como aprobar un impuesto especial a bienes y servicios de origen costarricense que sufrague gastos y costos en que se incurran en la defensa de esa agresión a nuestra Soberanía.
5. La presente declaración se enviará a la Asamblea Legislativa de la República de Costa Rica por medio de los canales correspondientes.

Dado en la ciudad de Managua, a los veintiocho días del mes de septiembre de dos mil cinco.

René NÚÑEZ TÉLLEZ,
Presidente
Asamblea Nacional

María Auxiliadora ALEMÁN ZEAS,
Primer Secretaria
Asamblea Nacional

III. LETTERS FROM THE AMBASSADOR OF COSTA RICA TO THE NETHERLANDS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

LETTER DATED 29 SEPTEMBER 2005

The Hague, 29 September 2005.

With reference to the Application of the Republic of Costa Rica deposited today,

I certify that the attachments are true copies of the documents referred to and that the translations provided are accurate. A certified translation of Attachment 7, Resolution A.N. No. 17-2005 of the National Assembly of the Republic of Nicaragua, 28 September 2005, will be provided shortly.

(Signed) Edgar Ugalde,
Ambassador of Costa Rica to the Netherlands,
Agent.

LETTER DATED 3 OCTOBER 2005

The Hague, 3 October 2005.

I certify that the attached translation of the Resolution of the National Assembly of the Republic of Nicaragua A.N. 17-2005 is accurate.

(Signed) Edgar Ugalde,
Ambassador of Costa Rica to the Netherlands,
Agent.

MEMORIAL OF COSTA RICA

MÉMOIRE DU COSTA RICA

DISPUTE CONCERNING NAVIGATIONAL AND RELATED RIGHTS

(COSTA RICA *v.* NICARAGUA)

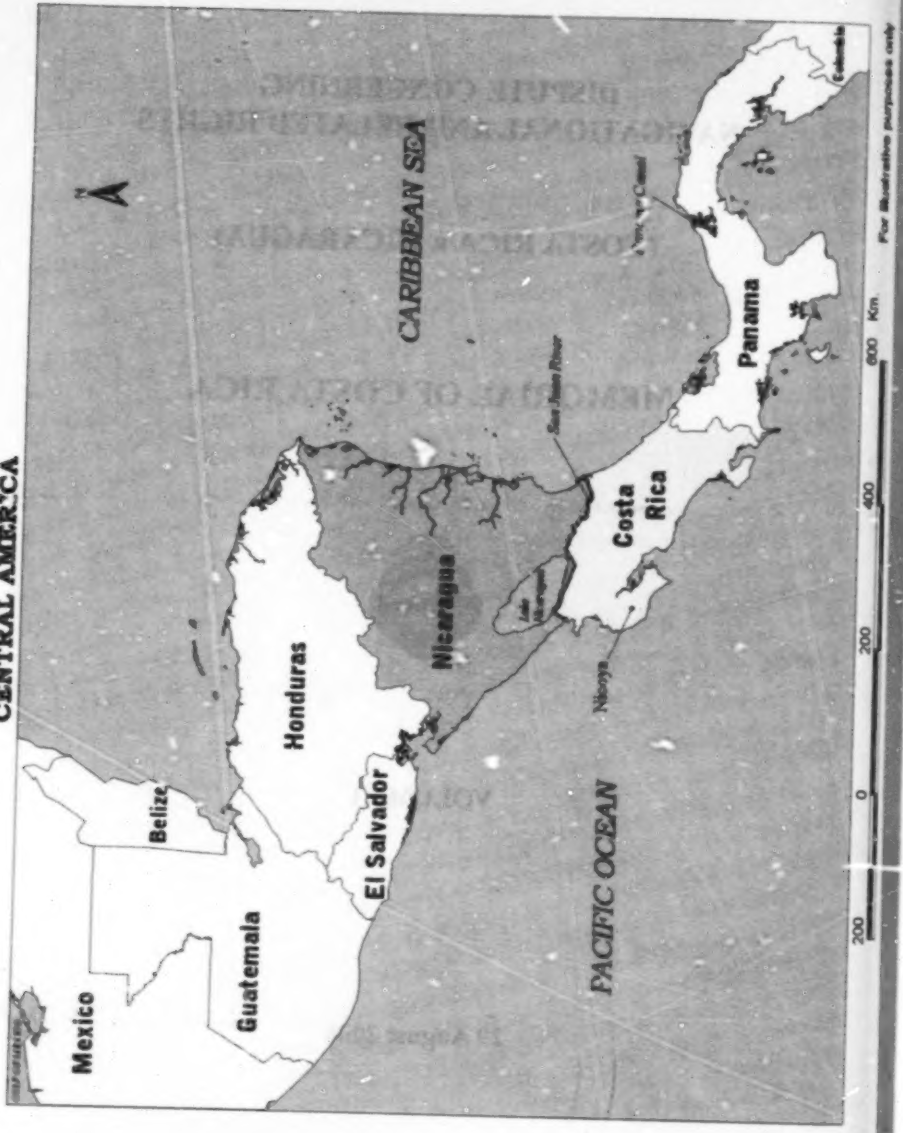
MEMORIAL OF COSTA RICA

VOLUME 1

29 August 2006

Sketch map 1

CENTRAL AMERICA


N
CARIBBEAN SEA
PACIFIC OCEAN
Mexico
Belize
Guatemala
Honduras
El Salvador
Nicaragua
Lake Nicaragua
Costa Rica
Nicoya
San Juan River
Panama
Panama Canal
Colombia
200
0
200
400
600
Km

For illustrative purposes only

Chapter 1

Introduction

A. Scope of the Dispute

1.01. The present proceedings were commenced by an Application which was filed with the Registry on 29 September 2005. They concern breaches by Nicaragua of Costa Rica's rights of navigation and related rights in respect of the San Juan River (hereafter "the San Juan"). These rights are set out in a series of treaties and decisions commencing with the Treaty of Limits of 15 April 1858 ("the Treaty of Limits").[1]

1.02. Costa Rica is a Central American Republic bounded on the north by Nicaragua and on the south by Panama. The territorial scope of the present dispute concerns that part of the boundary between Costa Rica and Nicaragua that follows the course of the San Juan. It is shown on **Sketch Map 1**, opposite.

1.03. The San Juan is a major river which flows from Lake Nicaragua in a generally easterly direction to the Caribbean Sea, a length of about 205 kilometres. For much of that distance (from below Castillo Viejo until near its mouth) the southern or right bank of the River constitutes the boundary between the two States.

1.04. The present boundary between Costa Rica and Nicaragua was first established by the Treaty of Limits. It left the waters of the San Juan within Nicaragua, but at the same time the Parties expressly recognised important Costa Rican rights of use of the River, in particular perpetual rights of free navigation of boats and passengers sailing to or from Costa Rica for commercial purposes. The validity of the Treaty of Limits was subsequently challenged by Nicaragua and was upheld in an arbitral award issued by the

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[1] Costa Rica and Nicaragua, Treaty of Limits, San José, 15 April 1858 (sometimes referred to as the Cañas-Jerez Treaty). In this Memorial, unless otherwise indicated, the English translation of the Treaty of Limits which will be used is the one submitted by Costa Rica to President Cleveland: see Annexes, Vol 2, Annex 7(b). The authoritative Spanish text is at Annexes, Vol 2, Annex 7(a). Also annexed are the translation submitted to President Cleveland by Nicaragua: Annexes, Vol 2, Annex 7(c), and a translation published in British and Foreign State Papers. Annexes, Vol 2, Annex 7(d).

President of the United States of America, Grover Cleveland, on 22 March 1888 ("the Cleveland Award").[2] At the same time the Cleveland Award confirmed and authoritatively interpreted the extent of Costa Rican rights of use of the River. These rights were further specified (with the force of *res judicata*) by the Central American Court of Justice in its judgment of 13 September 1916 in the case *Costa Rica v. Nicaragua* ("the 1916 Judgment")[3] and they were supplemented in the Agreement pursuant to Article IV of the Pact of Amity, Washington, D.C., 9 January 1956 ("the 1956 Agreement"), in particular articles 1 and 2.[4]

1.05. Costa Rica's rights of navigation on the River were and remain of considerable significance. The area contains national parks and forest reserves on both sides of the River. There are few roads, and none which proceed to the Caribbean coast in an east-west direction. The normal method of transport is by boat; this includes public transport, local traffic by riparians going to market or to school, and transport for the growing tourist industry. In short, the San Juan is for many purposes the only road.

1.06. Since the 1990s Nicaragua has imposed and maintained important restrictions on the navigation of Costa Rican boats and their passengers on the San Juan, restrictions tending to deny the substance of Costa Rica's rights entirely. These include the following:

(a) the imposition of charges on Costa Rican boats and their passengers;

(b) the obligation to stop successively at each Nicaraguan military post on the Nicaraguan bank of the River to report the names of the passengers and to obtain authorisation to navigate or, as the case may be, to continue to navigate, on the River;

(c) the prohibition imposed by Nicaraguan authorities on Costa Rican police personnel and their boats to navigate the San Juan River, with or without their service weapons (*armas de reglamento*);

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[2] The Award was given in English: see Papers relating to the Foreign Relations of the United States, 1889/I, 456-9: Annexes, Vol 2, Annex 16.

[3] English translation published in (1917) 11 AJIL 181: Annexes, Vol 2, Annex 21.

[4] 1465 United Nations Treaty Series 233: Annexes, Vol 2, Annex 24.

(d) the imposition of timetables for navigation on the River;
(e) the obligation to use the Nicaraguan flag as a precondition for navigating on the River;
(f) limitations to free moorage along the banks of the River; and
(g) other limitations to expeditious transit on the River.

1.07. Since the Application was filed, Nicaragua has tightened existing restrictions on the use of the River and imposed new ones, in particular requiring a passport and (for Costa Ricans) a visa, and prohibiting Costa Rican riparians from fishing in the River.

1.08. In these proceedings Costa Rica seeks, in particular, the cessation of all Nicaraguan conduct which prevents the free and full exercise and enjoyment of the rights that Costa Rica possesses on the San Juan, and which also prevents Costa Rica from fulfilling its responsibilities to guard and protect the River under article IV of the Treaty of Limits and article 2 of the 1956 Agreement and otherwise.

B. The Court's Jurisdiction

1.09. The Court has jurisdiction over the present dispute in accordance with the provisions of article 36, paragraph 2, of its Statute, by virtue of the operation of the following:

(a) the declarations of acceptance made respectively by the Republic of Costa Rica dated 20 February 1973, and by the Republic of Nicaragua dated 24 September 1929;
(b) the Tovar-Caldera Agreement, Alajuela, 26 September 2002.[5]

1.10. The Court also has jurisdiction over the present dispute in accordance with the provisions of article 36, paragraph 1, of its Statute, by virtue of the operation of article XXXI of the American Treaty on Pacific Settlement of Disputes, Bogotá, 30 April 1948 (the Pact of Bogotá).[6] The Parties have also expressed their mutual commitment to the Pact of Bogotá through the Pact of Amity, Washington, D.C., 21 February 1949, article III.[7]

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[5] 2197 United Nations Treaty Series 78: Annexes, Vol 2, Annex 29.

[6] 30 *United Nations Treaty Series* 55. Both Costa Rica and Nicaragua are parties to the Pact of Bogotá.

1.11. Under the Tovar-Caldera Agreement, in consideration of Nicaragua maintaining unchanged for three years the legal status with respect to its declaration of acceptance of this Court, Costa Rica agreed during the same period not to initiate any action "before the Court nor before any other authority on any matter or protest mentioned in treaties or agreements currently in force between both countries". The purpose of this Agreement was explained by then President Bolaños of Nicaragua in the following terms:

> "we always acknowledge the International Court and precisely what we are doing now is establishing a standstill period, but I am certain that in three years Nicaragua and Costa Rica will not need to have recourse to any court."[8]

1.12. During the three-year standstill period, the two Parties were indeed able to make progress on a number of important issues for the Central American region, to their mutual benefit. Unfortunately, however, the dispute over navigational and related rights on the San Juan remains unresolved. It is this dispute which is now submitted to the Court.

C. The Structure of this Memorial

1.13. This Memorial is filed in accordance with the Court's Order of 29 November 2005.

1.14. The Memorial consists of five further Chapters, as follows:

Chapter 2 sets out the necessary geographical and historical background to the issues, in particular tracing the process by which the Treaty of Limits was agreed, applied, upheld and interpreted both by the Parties and in the course of third-party dispute settlement;

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[7] 1465 *United Nations Treaty Series* 221: Annexes, Vol 2, Annex 23.

[8] In Spanish: "Siempre reconocemos a la Corte Internacional y lo que estamos haciendo precisamente es dar un compás de espera, pero estoy seguro que dentro de tres años Nicaragua y Costa Rica no vamos a necesitar acudir a ninguna Corte": Statement by President Bolaños, as reported in "The San Juan Frozen", *La Prensa*, Managua, 27 September 2002: Annexes, Vol 5, Annex 178.

Chapter 3 traces the emergence of the dispute submitted to the Court and details the attempts by Costa Rica to resolve it;

Chapter 4 sets out the scope of the Costa Rica's rights under the Treaty of Limits, subsequent agreements and decisions and general international law;

Chapter 5 details the breaches by Nicaragua of those rights; and

Chapter 6 sets out the remedies sought by Costa Rica at this stage of the proceedings.

1.15 In addition, **Appendix A** outlines certain issues relating to the status of the River in international law, and **Appendix B** describes the evolution and functions of the Costa Rican Revenue Guard (*Resguardo Fiscal*) on the River.

1.16 Annexed to this Memorial are five volumes of documentary annexes (Annexes 1-245). A list of annexes is provided at the end of this volume.

Chapter 2

Geographical and Historical Background

A. The geography of the San Juan basin

2.01. The San Juan runs approximately 205 kilometres from Lake Nicaragua to the Caribbean Sea. In earlier times the River was also referred to as the Desaguadero, because it constitutes the only natural outlet of Lake Nicaragua to the sea (the term *desaguadero* means "outlet"). It flows within the largest river basin in the Central American isthmus. The geographical extension of the basin is defined by Lake Nicaragua, the San Juan River system, the basins of the Indio and Maíz Rivers in Nicaragua on the north and the Costa Rican river basin system on the south. For the course of the River with some key locations see **Sketch Map 2** on the following page.

2.02. The San Juan lies completely within the tropical region, but differences in altitude and relief allow for a certain climatic diversity. The central mountain chain permits the definition of an eastern region with a tropical rain forest and rainfall between 4,000 and 6,000 mm per year; a western zone or tropical savannah region located in the drainage area of Lake Nicaragua, with rainfall ranging from 700 to 2,500 mm but with a very marked dry season; and an intermediate region with rainfall of more than 2,500 mm and without a marked dry season.

2.03. The upper stretch of the River, to the mouth of the San Carlos River in Costa Rica, is narrow, deep, without islands and with few rapids. By contrast its lower stretch, downstream from the mouth of the San Carlos, is wide, shallow and has several islets, as well as a stretch where there are significant rapids. As will be seen from **Sketch Map 2**, the San Juan divides some 19.3 kms from the sea. The San Juan itself is the northerly of the two rivers and empties into the Caribbean Sea at the Bay of San Juan del Norte. The Colorado River is the southern and larger stream: it runs entirely within Costa Rica, reaching the sea at Barra del Colorado.

2.04. The tributaries of the northern sector of the San Juan flow through Nicaraguan territory. They are short in length, generally oriented north to south and have gentle slopes. The largest of these is the Sábalos. The tributaries of the southern sector originate in Costa Rican territory at elevations of up to 3,000 metres. Except for those which flow into Lake Nicaragua, these tributaries are located entirely within Costa Rican territory. They have more extensive drainage basins and contribute up to 70% of the total flow of the San Juan. The most important of these southern tributaries are the Sarapiquí and the San Carlos.

2.05. As will be seen from **Sketch Map 3** (on the following page), various small towns and villages are located along or near the San Juan. On the Nicaraguan side are the towns of Castillo Viejo, San Carlos and the villages of El Castillo and San Juan del Norte. On the Costa Rican side the villages include: Tiricias, Jocote, Crucitas, Finca Baladuca, San Antonio, Jardín, Chorreras, Flor, Boca San Carlos, La Cureña, Remolinito, Boca Sarapiquí (also known as Trinidad), Tigra, Fátima, Delta Costa Rica and, further south-east, the town of Barra del Colorado.

2.06. The population of the region (numbering in the thousands) mostly depends on agriculture and fishing. Poverty remains widespread, and access by road and air is very difficult given the natural configuration of the zone. There are no railways and no sealed roads along or parallel to the River. Communication between the villages and farms along the San Juan is almost entirely riverine. But tourism is already a significant contributor to the economy and has great potential for development. **Sketch Map 4** following shows the protected areas and wildlife reserves along the Costa Rican bank. There are also similar reserves on the Nicaraguan side. The region is one with significant biodiversity.

2.07. At the mouth of the San Juan is a complex area of marshland and waterways linking the River with the Bay of San Juan del Norte. In the 19th century the Bay was a major port with deep water access, even though (at that time as today) most of the water flowing in the San Juan upstream of Delta Costa Rica went down the River Colorado. During the course of the 19th century the Bay of San Juan del Norte became increasingly silted up, a situation which has continued to the present day and is shown on **Sketch Map 5** following. The port town of San Juan del Norte was originally located on the

Bay; from 1848 (during the period of the British protectorate of Mosquitia) it was named Greytown. Following the silting of the Bay and the decline in trans-Isthmian traffic which resulted from the opening of the Panama Canal, Greytown was abandoned and the village of San Juan del Norte moved to an arm of the bay to the north.

B. Historical background

(1) The San Juan under Spanish rule (1492-1821)

2.08. During the period of Spanish colonial rule the San Juan never belonged exclusively to any one of the provinces of the Captaincy-General of Guatemala. The position of the San Juan River was first defined by the King of Spain's Royal Ordinance of 29 November 1540 to Diego Gutiérrez, for the conquest of the Province of Cartago.[9] Under this Ordinance the River was divided into two. The upper part, 15 leagues in length from its outlet in the Lake, was to belong to the Province of Nicaragua. The lower part, to the mouth of the river on the Northern or Caribbean Sea, was to belong to Costa Rica. As far as concerned the use of the River and the Lake for purposes of navigation and fishing, it was provided that both should be common to the two Provinces without distinction. Thus, the Royal Ordinance to Diego Gutierrez provided as follows:

> "Firstly, I grant you license and faculty so that on our behalf and in our name and that of the Royal Crown of Castille you may conquer and populate the land that remains for us in said Province of Veragua, inclusive from sea to sea… measured in the said manner must commence your conquest and population, and end at the Rio Grande, towards the west of the other part of Cape Camarón, the coast of said river towards Honduras remaining under the governance of the said province of Honduras, also if in said river there be islands populated or to be populated with Indians, which have not been populated and conquered by Spaniards, you can conquer them, and the navigation and fishing and other uses of the said river shall be common, provided and insofar as you do not come within fifteen leagues of the lagoon of Nicaragua, since those fifteen leagues and with the said lagoon must stay and stays to the governance

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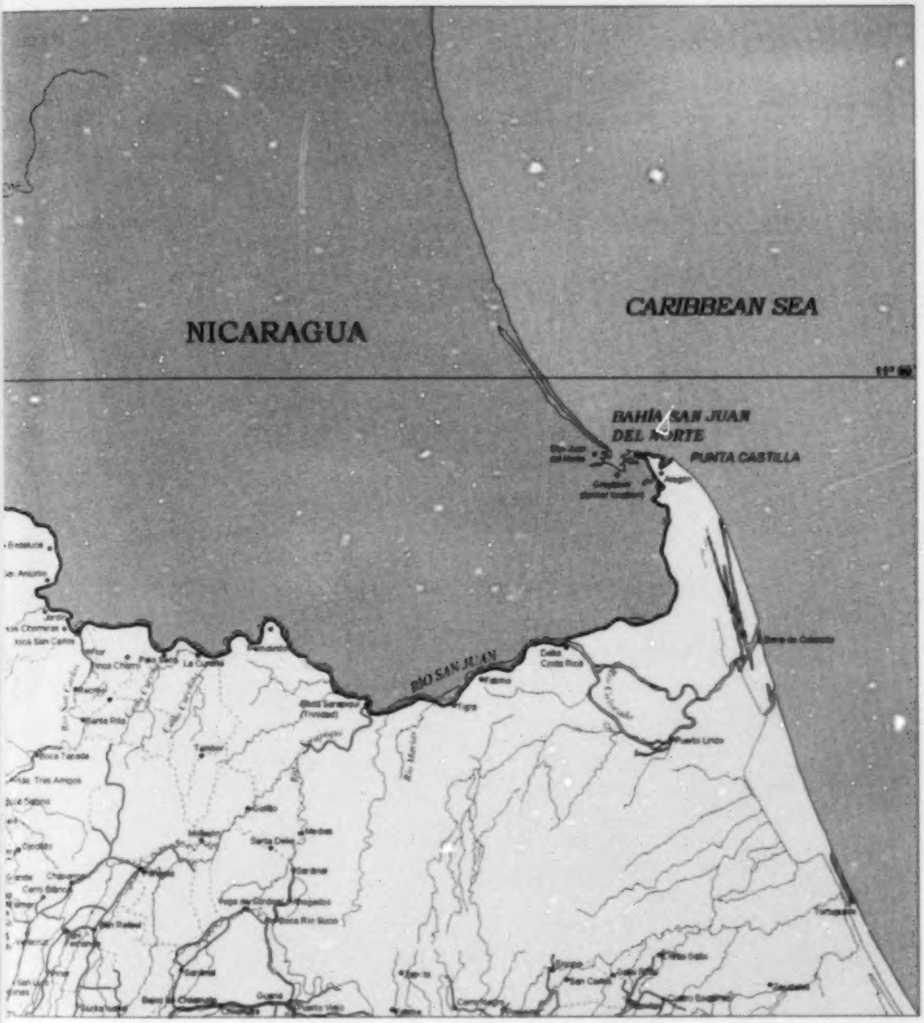
[9] Capitulación con Diego Gutiérrez para la conquista de la Provincia de Cartago, 29 November 1540, in MM de Peralta, *Costa-Rica Nicaragua y Panamá en el Siglo XVI su Historia y sus Limites* (Madrid: Libreria Murillo, 1883) (hereafter Peralta), 101-103: Annexes, Vol 2, Annex 1.


NICARAGUA
CARIBBEAN SEA
11° 00'
BAHÍA SAN JUAN DEL NORTE
PUNTA CASTILLA
RIO SAN JUAN
Delta Costa Rica
Puerto Lindo

For illustrative purposes only

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Bay and the decline in
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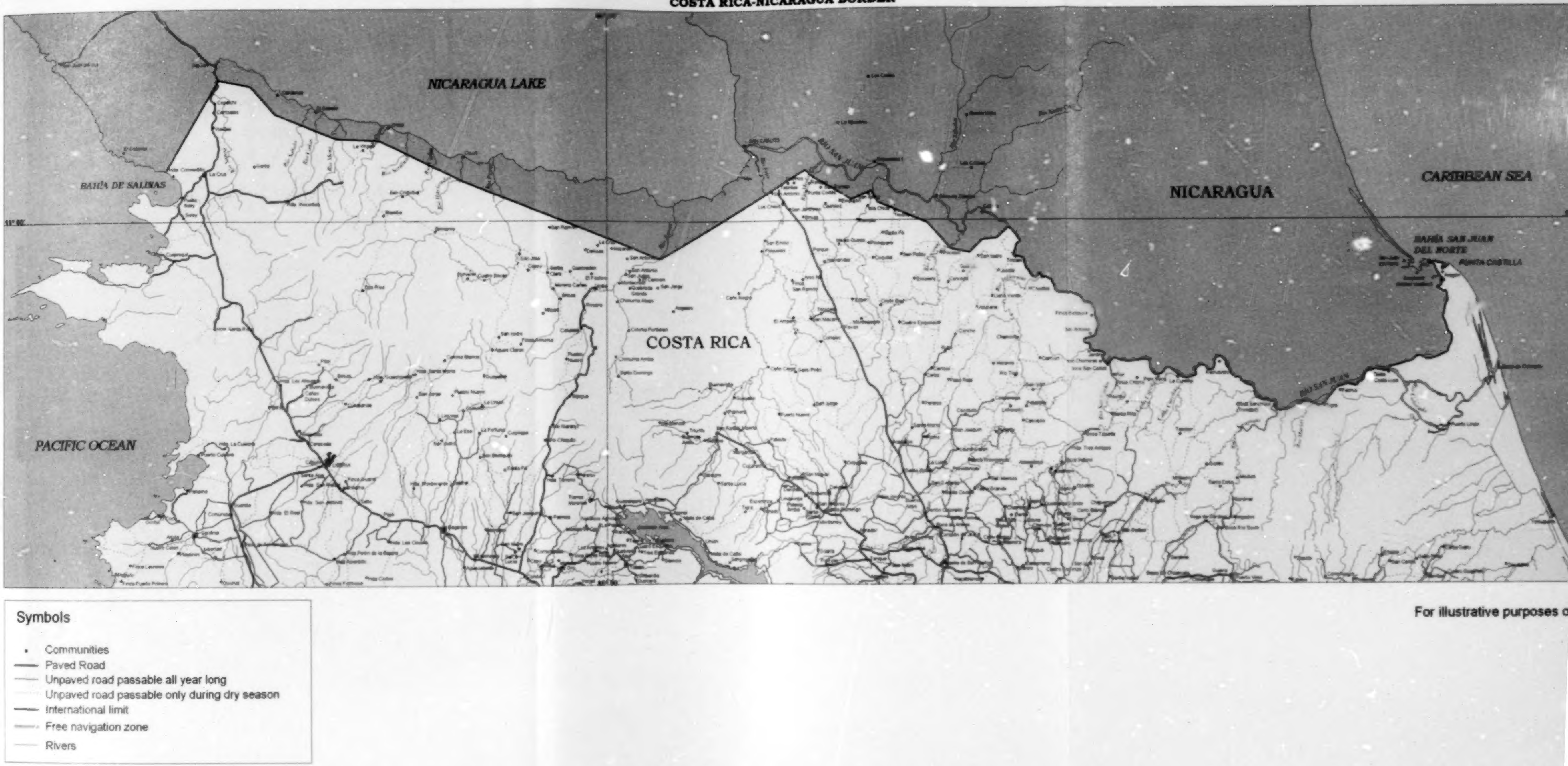
Limites (Madrid: Libreria Murillo,

Sketch map 2

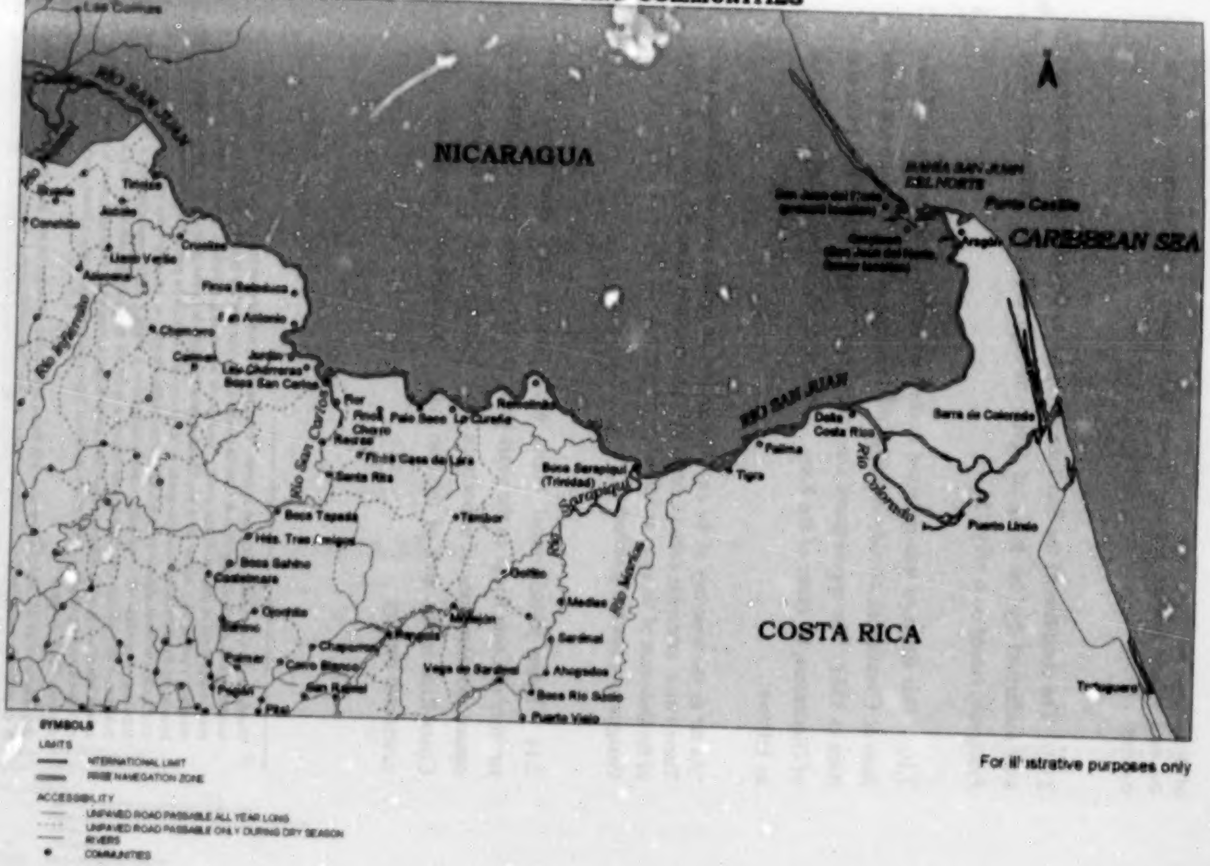
COSTA RICA-NICARAGUA BORDER


NICARAGUA LAKE
NICARAGUA
CARIBBEAN SEA
BAHÍA DE SALINAS
COSTA RICA
PACIFIC OCEAN
BAHÍA SAN JUAN DEL NORTE
PUNTA CASTILLA
RÍO SAN JUAN
San Carlos
11° 00'
Symbols
Communities
Paved Road
Unpaved road passable all year long
Unpaved road passable only during dry season
International limit
Free navigation zone
Rivers

For illustrative purposes o

Sketch map 3

MAIN ROADS AND COMMUNITIES


NICARAGUA
COSTA RICA
CARIBBEAN SEA
RIO SAN JUAN
RIO SAN JUAN
BAHIA SAN JUAN DEL NORTE
Punta Castilla
Las Colinas
Barra de Colorado
Delta Costa Rica
Rio Colorado
Puerto Lindo
Palma
Tigra
Boca Sarapiquí (Trinidad)
Sarapiquí
Rio San Carlos
Boca San Carlos
Jardín
Crucitas
Llano Verde
Chamorro
Santa Rita
Boca Tapada
Tambor
La Cureña
Palo Seco
Medias
Sardinal
Vega de Sardinal
Boca Rio Sucio
Puerto Viejo
Chaparrón
Cerro Blanco
San Rafael
Pital
Tortuguero
SYMBOLS
LIMITS
INTERNATIONAL LIMIT
FREE NAVEGATION ZONE
ACCESSIBILITY
UNPAVED ROAD PASSABLE ALL YEAR LONG
UNPAVED ROAD PASSABLE ONLY DURING DRY SEASON
RIVERS
COMMUNITIES

For illustrative purposes only

of Nicaragua; but the navigation and fishing that remains with you in said river, and the said fifteen leagues and the lagoon that remain with Nicaragua shall be common…"[10]

2.09 The condition of the San Juan in regard to this territorial arrangement was reaffirmed by the King of Spain through a Royal Ordinance (*Real Provisión*) issued on 6 May 1541.[11]

2.10 This situation was reflected in the instrument of appointment of Don Juan de Cavallon as *Alcalde Mayor* of the Province of New Cartago and Costa Rica in 1561. The appointment was made on 17 May 1561 by the *Audiencia* of Guatemala, by order of the King. It described the limits of his jurisdiction as follows:

> "As far as the boundary of the city of Nata and its jurisdiction, in the Kingdom of Tierra Firme, otherwise called Castilla del Oro, and then along this line to the limits of the Dukedom of Veragua, and from the Southern Sea to the Northern Sea up to the Desaguadero, this being included."[12]

2.11 These jurisdictional limits were continuously understood as the territory of Costa Rica. In the years prior to 1821, when Spanish colonial rule ceased, no alterations of importance were made by the Crown in the limits of Costa Rica in the area of the San Juan. Disputes only arose later in the nineteenth century.

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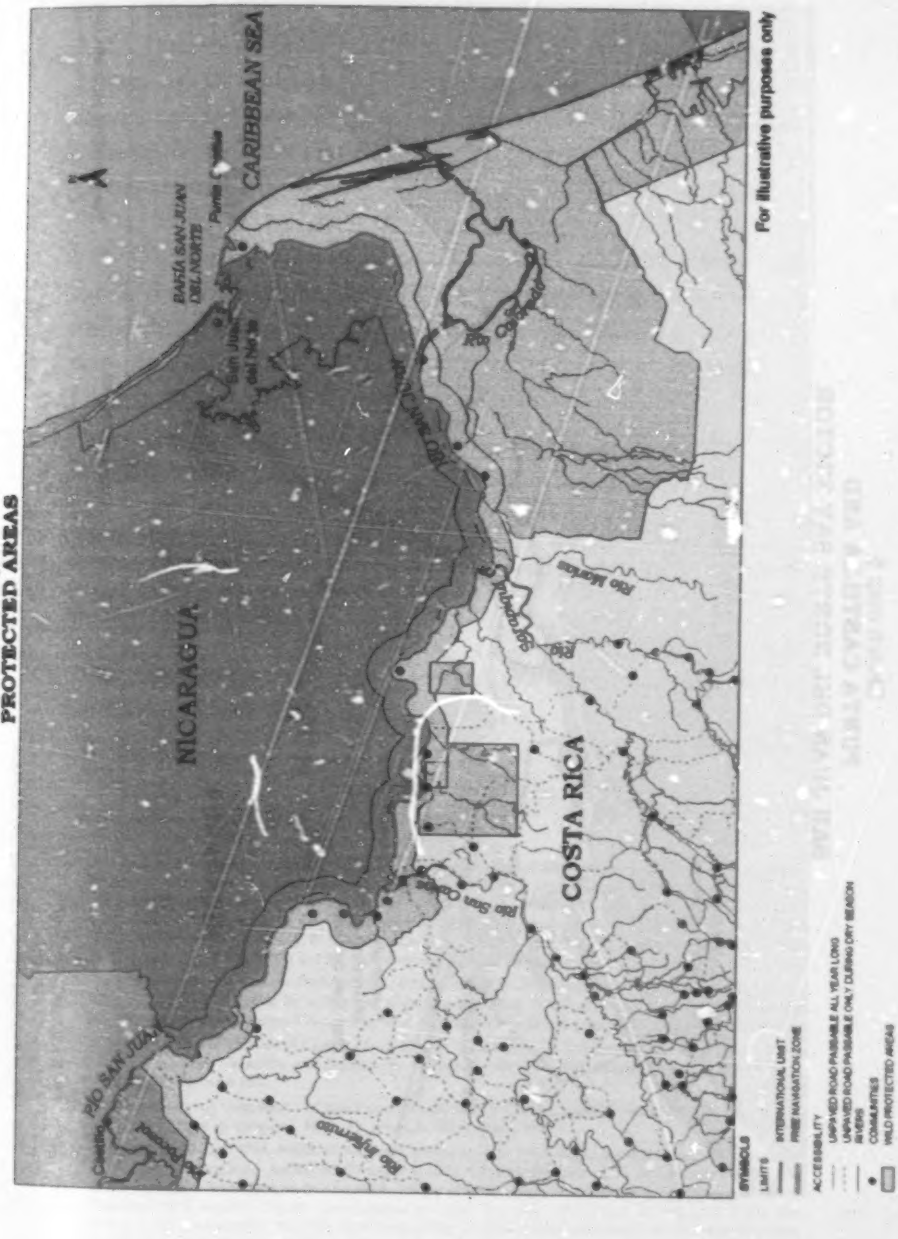
[10] Translation by Costa Rica. Original Spanish: "Primeramente, vos doy licencia y facultad para que por nos y en nuestro nombre e de la Corona Real de Castilla podays conquistar y poblar la tierra que queda para nos en la dicha provincia de Veragua, ynclusa de mar a mar… medidas de la manera que dicha es, ha de començar la dicha vuestra conquista y poblaçion y acabar en el Rio Grande, hacia Poniente de la otre parte del cabo del Camaron, con que la costa del dicho rio hacia Honduras quede en la gobernaçion de la dicha provincia de Honduras, e ansymismo si en el dicho rio oviere algunas yslas pobladas o por poblar de yndios, y no estuvieren pobladas y conquistadas de españoles, las podays vos conquistar, y que la navegaçion y pesca y otros aprovechamientos del dicho rio sean comunes, e ansy mismo, con tanto que no llegueis a la laguna de Nicaragua con quince leguas, por cuanto estas quince leguas con la dicha laguna a de quedar e quede á la gobernaçion de Nicaragua; pero la navegaçion y pesca de lo que a vos os queda en el dicho rrio, y las quinze leguas y laguna que quedan a Nicaragua ha de ser comun…": Annexes, Vol 2, Annex 1.

[11] Real Provision de SS. MM el Emperador y la Reina Doña Juana sobre los límites de la gobernacion de Cartago, y en particular sobre los del Desaguadero ó Rio de San Juan de Nicaragua, 6 May 1541, in Peralta, 125-27: Annexes, Vol 2, Annex 2.

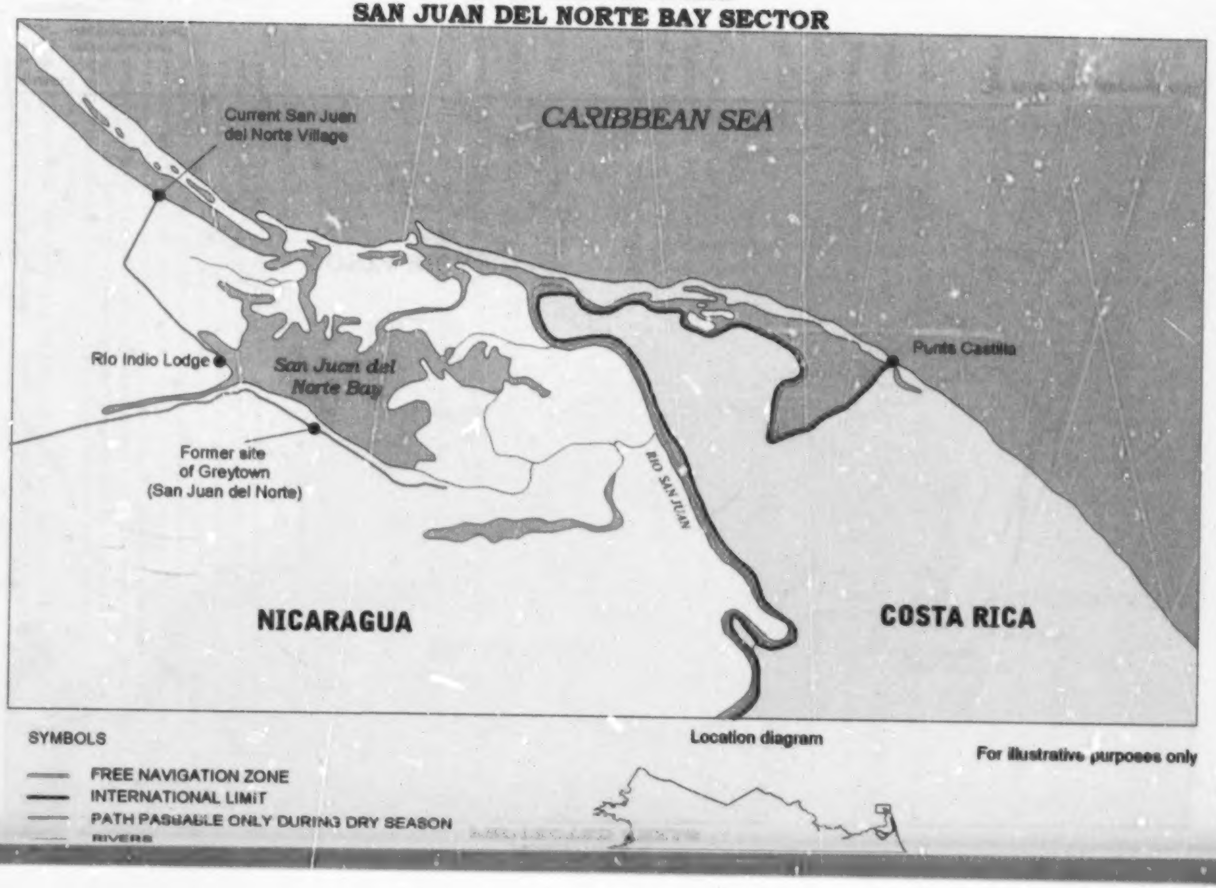
[12] "Titulo de Alcalde Mayor de las Provincias de Nueva Cartago y Costa Rica, en favor del Licenciado Juan Cavallon.- Limites de estas Provincias", 17 May 1561, in Peralta, 194-5: Annexes, Vol 2, Annex 3. The "Southern Sea" is the Pacific Ocean; the "Northern Sea" the Caribbean Sea.

Sketch map 4
PROTECTED AREAS


NICARAGUA
COSTA RICA
CARIBBEAN SEA
BAHÍA SAN JUAN DEL NORTE
Punta Castilla
San Juan del Norte
RÍO SAN JUAN
Castillo
Río Pocosol
Río Infiernito
Río San Carlos
Río Sarapiquí
Río Chirripó
Río Colorado
SYMBOLS
LIMITS
INTERNATIONAL LIMIT
FREE NAVIGATION ZONE
ACCESSIBILITY
UNPAVED ROAD PASSABLE ALL YEAR LONG
UNPAVED ROAD PASSABLE ONLY DURING DRY SEASON
RIVERS
COMMUNITIES
WILD PROTECTED AREAS

For illustrative purposes only

Sketch map 5
PUNTA CASTILLA AND SAN JUAN DEL NORTE BAY SECTOR


CARIBBEAN SEA
Current San Juan del Norte Village
Punta Castilla
Rio Indio Lodge
San Juan del Norte Bay
Former site of Greytown (San Juan del Norte)
RIO SAN JUAN
NICARAGUA
COSTA RICA
SYMBOLS
FREE NAVIGATION ZONE
INTERNATIONAL LIMIT
PATH PASSABLE ONLY DURING DRY SEASON
RIVERS
Location diagram

For illustrative purposes only

(2) The post-independence period (1821-1856)

2.12. The independence from Spain of the Central American Provinces was declared on 15 September 1821.[13] In addition to establishing their own constitutions, the States of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica combined to form the Federal Republic of the United Provinces of Central America (1823-1839).[14]

2.13. The Fundamental Law of the State of Costa Rica of 25 January 1825, Article XV, reasserted the limits of Costa Rica, establishing that the territory reached both seas and extended from south to north, "being its limits on the north the mouth of the San Juan River and the shield of Veraguas…".[15] Likewise the Decree of Basis and Guarantees of 1841, established the limits of the national territory of Costa Rica, declaring the limit of the national territory in the following terms:

> "On the west, the La Flor River and continuing its line along the shore of the Lake of Nicaragua and the San Juan River, down to the mouth of the latter on the Atlantic Ocean; on the north, the same ocean from the mouth of the San Juan River to the Shield of Veraguas…"[16]

Those were also the limits set forth in later Costa Rican constitutions prior to the Treaty of Limits.[17]

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[13] All the territories today comprising Costa Rica and Nicaragua were administered by Spain as the Captaincy-General of Guatemala. The Captaincy-General became independent from Spain on 15 September 1821. It was incorporated into the Mexican Empire of Augustín de Iturbide on 5 January 1822; but separated from Mexico in July 1823. A Constitution of the Central American Federation was adopted on 22 November 1824. The Federation comprised Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica. Nicaragua separated from the Federation on 30 April 1838 and the Federation was subsequently dissolved.

[14] See J Sáenz Carbonell, *Historia Diplomática de Costa Rica (1821-1910)* (1st edn, San José: Editorial Juricentro, 1996), 39-42, and the recital by a Chamber of the Court in *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening)*, I.C.J. Reports 1992, p. 351, in particular 600-1 (paragraphs 402-3).

[15] Fundamental Law of the State of Costa Rica, 25 January 1825, Article 15, *Colección de Constituciones de Costa Rica: Del pacto de Concordia a la Constitución Política de 1949* (San José, Imprenta Nacional, 2000), 80-1: Annexes, Vol 6, Annex 193.

[16] Decree of Basis and Guarantees of Costa Rica, 8 March 1841, Article 1.1, *Digesto Constitucional de Costa Rica* (San José: Colegio de Abogados, 1946), 89: Annexes, Vol 6, Annex 194.

[17] Constitution of 9 April 1844, Article 47, *Digesto Constitucional de Costa Rica*, (San José: Colegio de Abogados, 1946), 107: Annexes, Vol 6, Annex 195; Constitution of 10 February 1847, Article 25, *Digesto Constitucional de Costa Rica* (San José: Colegio de Abogados, 1946), 130: Annexes, Vol 6, Annex 196; Constitution of 30 November 1848, Article 7, *Digesto Constitucional de Costa Rica*, (San José: Colegio de Abogados, 1946), 154: Annexes, Vol 6, Annex 198. The 1859 Constitution reflected the new situation arising from the Treaty of Limits: Constitution of 27 December 1859, Article 4, *Digesto Constitucional de Costa Rica* (San José: Colegio de Abogados, 1946), 169: Annexes, Vol 6, Annex 203.

2.14 At this time the principal territorial issue between Costa Rica and Nicaragua concerned the latter's claim to the Nicoya peninsula on the Pacific coast. In 1824 the people of Nicoya opted by plebiscite to become part of Costa Rica, a decision approved by decree of the Central American Federal Congress on 9 December 1825.[18] This situation was not finally accepted by Nicaragua until the Treaty of Limits of 1858.

2.15 In the period prior to the conclusion of the Treaty of Limits, four key circumstances were at play in terms of the relations between Costa Rica, Nicaragua and third States. Brief reference needs to be made to each of these.

(a) The proposed trans-Isthmian canal

2.16 The independence of the Central American Provinces from Spain coincided with the growth in interest in an interoceanic canal. At the time (and for most of the century) it was thought that the route via the San Juan and Lake Nicaragua was preferable to the Panama route. From 1826, a series of contracts and treaties were negotiated which envisaged an interoceanic canal by way of the San Juan and Lake Nicaragua. Most of these contracts and treaties were negotiated with Nicaragua, although the earliest contracts were negotiated by the Central American Republic and subsequent to the dissolution of the federation Costa Rica was also closely involved as a Party, solely or jointly. Negotiations over the proposed canal continued after the Treaty of Limits was signed: these are addressed below.

(b) The British protectorate over the Mosquito Indians

2.17 There was a long-standing British interest in the Caribbean coast of Central America, referred to as the Mosquito Coast. Article 6 of the Treaty of Peace between Great Britain and Spain of 3 September 1783 affirmed that English wood-cutters had the right to operate between the River Belize and the River Hondo (a coast corresponding roughly to present-day Belize) and provided for common navigation by both States along the rivers.[19] Nonetheless an English presence remained along the more southerly Mosquito Coast after the 1783 treaty. A formal base for this was asserted in 1844 when Great Britain proclaimed a protectorate over the "Kingdom of the Mosquitos", i.e. the Mosquito (Meskito) Indians who inhabited the region.[20] A statement by the British Foreign Office dated 30 June 1847 declared that the Mosquito Protectorate extended from San Juan del Norte to Cape Honduras.[21] In 1848 Great Britain, with the aid of Mosquito forces, seized San Juan del Norte, renaming it Greytown.

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[18] C Obregón Quesada, *El Río San Juan en la lucha de las potencias (1821-1860)* (1st edn, San José: EUNED, 2001), 45.

[19] Treaty of Peace between Great Britain and Spain, signed at Versailles, 3 September 1783, 48 CTS 481, 484-5.

2.18 According to the Report accompanying the Award of 2 July 1881 in the *Mosquito Coast Arbitration*, Great Britain by the 1850 Clayton-Bulwer Treaty and the 1852 Crampton-Webster Treaty "tacitly renounced" its protectorate over the Mosquito Coast.[22] Article I of the Clayton-Bulwer Treaty provided, *inter alia*, that neither the United States nor Great Britain would exercise dominion over the coast.[23] But it remained to settle definitely the relation between the Mosquito Coast and the rest of Nicaragua. That issue was addressed in the Treaty of Managua of 28 January 1860, by which Great Britain expressly renounced the protectorate in favour of Nicaragua, subject to a temporary guarantee of local autonomy for the Indians and with San Juan del Norte as a free port.[24]

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[20] Memorandum on the Mosquito Shore, F.O. 15 December 1843; Macdonald to Aberdeen, 20 December 1843, in F.O. 15/36; Rodriguez, 246 n 28.

[21] Palmerston, No. 14, 30 June 1847, F.O. 15/44, cited by Rodriguez, 285 n 59.

[22] Treaty between Great Britain and Nicaragua relative to the Mosquito Indians and the Rights and Claims of British Subjects, Managua, 28 January 1860: 121 CTS 317. See *Mosquito Coast Arbitration*, Award of the Emperor of Austria as to the Interpretation to be put on certain Articles of the Treaty between Great Britain and Nicaragua of 28 January 1860, Vienna, 2 July 1881, art 1, reprinted, 72 BFSP 1212; Report accompanying the Award, in H La Fontaine, *Pasicrisie Internationale 1794-1900* (1902, reprinted Nijhoff, The Hague, 1997), 387 (hereafter *Pasicrisie Internationale*).

[23] Convention for Facilitating and Protecting the Construction of a Ship Canal between the Atlantic and Pacific Oceans etc. between Great Britain and the United States, Washington, D.C., 19 April 1850 (Clayton-Bulwer Treaty), 104 CTS 41, 42-3: Annexes, Vol 2, Annex 4.

[24] See *Mosquito Coast Arbitration*. Vienna, 2 July 1881, art 1, reprinted, 72 BFSP 1212; Report accompanying the Award, in *Pasicrisie Internationale*, 387:
"In dem Vertrage von Managua wurde von England das Protectorat über das Mosquito-Gebiet ausdrücklich aufgegeben (Art. I, Alin. 2), die Souveränität der Republik Nicaragua über das ganze innerhalb ihrer Grenzen gelegene Gebiet der Mosquito-Indianer unter den im Vertrag specificirten Bedingungen und Verpflichtungen anerkannt (Art. I, Alin. I), zugleich aber den Mosquito-Indianern ein genau abgegrenztes Territorium zugewiesen und vorbehalten (Art. II, VIII), innerhalb desselben sie das Recht der Selbst-regierung («self-government») zu geniessen haben (Art. III)."
"In the Treaty of Managua, England expressly relinquished its protectorate over the Mosquito region (Art. I, Line 2), recognized the sovereignty of the Republic of Nicaragua over the entire region of the Mosquito Indians lying within its borders, subject to conditions and obligations specified in the Treaty (Art. I, Line 1), but at the same time assigned and reserved to the Mosquito Indians a specifically delimited territory (Art II, VIII), within which they are to enjoy the right of self-government (Art III)." (Translation provided by Costa Rica.)

(c) Agreements between Great Britain and the United States

2.19 The rivalry between the United States of America and Great Britain concerning control of the isthmus and an interoceanic canal was addressed by the Clayton–Bulwer Treaty on 19 April 1850, which stipulated the neutrality of all inter-oceanic communications through the Central American isthmus, clearly referring to the passage to be opened via the San Juan. The Treaty acknowledged that the issue of authority over the San Juan remained unsettled: articles IV and VI provided that both States would endeavour to convince any State having or claiming jurisdiction or rights over the territories where the canal might pass to facilitate the construction of the canal.[25]

(d) Conflicts arising from the intervention of the filibusters

2.20 By 1854, the state of Nicaragua had been undergoing internal conflict for several years, prompting one of the Nicaraguan factions to sign an agreement to secure the support of American mercenaries, known as "filibusters" and led by William Walker.[26] After a few months in Nicaragua, Walker quickly made known his intentions to conquer the entire Central American region and to establish slavery there. Soon he controlled most of Nicaragua including the newly opened transit route, seizing all the ships and property of the *Compañía Accesoria del Tránsito*, owned by Cornelius Vanderbilt and associates.

2.21 Costa Rica, after a campaign against the filibusters, first in the north-western region of Costa Rica and at the town of Rivas in Nicaragua, and then by campaigning in the region of the San Juan (assisted by other Central American countries) managed to overpower the invader. During this period, Costa Rica was active in the region of the San Juan and at the end of the conflict was left in possession of all the steamers previously owned by the *Compañía Accesoria del Tránsito*.[27]

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[25] Clayton-Bulwer Treaty: Annexes, Vol 2, Annex 4.

[26] A general account of the filibusters is found in CH Brown, *Agents of Manifest Destiny* (University of North Carolina Press, Chapel Hill, 1980).

[27] On 22 December 1856, the Costa Rican army arrived at Trinidad, in the mouth of the Sarapiquí River, and captured the filibuster camp there. It also captured four steamers anchored in San Juan del Norte. With these the army travelled upriver and captured the remaining four steamers as well. By 30 December 1856 it had also taken Fort San Carlos. See D Folkman, *La Ruta de Nicaragua* (3rd edn, Managua: Imprelibros, 2001), 158-9; J Sáenz Carbonell, *Historia Diplomatica de Costa Rica (1821-1910)* (1st edn, San José, Editorial Juricentro, 1996), 209.

(3) The conclusion of the Treaty of Limits 1858

2.22. After the filibusters had been defeated and Nicaragua had returned to normality, negotiations between the two countries to settle outstanding bilateral matters, including the issue of the San Juan, resumed.

2.23. On 6 July 1857[28] and 8 December 1857,[29] agreements were signed dealing with the matter of limits and the issue of the San Juan. The Treaty signed on 6 July 1857 was not ratified by Costa Rica. The Treaty of 8 December 1857 was not ratified by either Costa Rica or Nicaragua.

2.24. However through the mediation of the Salvadorian Minister of Foreign Affairs, Pedro Romulo Negrete, the Governments of Costa Rica and Nicaragua reached agreement on 15 April 1858 on a Treaty of Limits, otherwise referred to as the Cañas-Jerez Treaty.

2.25 The Treaty of Limits established Nicaragua's dominion and sovereign jurisdiction over the waters of the San Juan, but at the same time asserted Costa Rica's navigational rights on the lower course of the river. Accordingly, article VI of the 1858 Treaty stated:

> "ARTICLE VI
>
> The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river, which is hereby declared to belong to Costa Rica. The vessels of both countries shall have the power to land indiscriminately on either side of the river at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments."

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[28] Costa Rica-Nicaragua, Treaty of Limits (Cañas–Juárez), Managua, 6 July 1857 (unratified), www.manfut.org/cronologia/t-canasjuarez.html: Annexes, Vol 2, Annex 5.

[29] Costa Rica-Nicaragua, Convention of Peace (Cañas–Martinez), Rivas, 8 December 1857 (arts 8, 9 subject to ratification; remainder in force on signature), 49 BFSP 1222: Annexes, Vol 2, Annex 6.

2.26. The Treaty of Limits was ratified by Costa Rica on 16 April 1858 and by Nicaragua on 26 April 1858.[30] On that same day the ratification instruments were exchanged by the two Presidents in the city of Rivas, Nicaragua.

2.27. Besides establishing Costa Rica's navigational rights, the 1858 Treaty of Limits established other rights and obligations for both parties:

(a) the Bay of San Juan del Norte, on the Carribean, and the Bay of Salinas, on the Pacific, are common to both Republics (article IV);

(b) both Republics have a common obligation to contribute to the defence of the bays of San Juan del Norte and Salinas (article IV);

(c) Costa Rica has an obligation to contribute to the custody of the San Juan (article IV);

(d) both Republics have an obligation to contribute, with all the efficiency within their reach, to the defence of the San Juan in case of external aggression (article IV);

(e) Nicaragua has an obligation not to bind itself to canalization or transit contracts "without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries…if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory" (article VIII). In other words, if the canalization or transit contracts injure Costa Rica's natural rights, its opinion is compulsory; and

(f) both Costa Rica and Nicaragua have an obligation not to commit acts of hostility against each other, whether in the port of San Juan del Norte on the River or on Lake Nicaragua, even in the event of war between them (article IX).

(4) Nicaragua's challenge to the Treaty of Limits and the Cleveland Award 1888

2.28 By 1860, the navigability of the Bay of San Juan del Norte and the San Juan itself had deteriorated, due to large amounts of sediments that were effectively closing the mouth of the Bay. This made Costa Rica's agreement to

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[30] The Treaty was in fact twice ratified by Nicaragua: by decree of President Tomas Martinez, President of the Republic of Nicaragua, reproduced in P. Pérez Zeledón, *Argument on the Question of the Validity of the Treaty of Limits between Costa Rica and Nicaragua* (Washington, D.C.: Gibson Bros, 1887), 53-4 (hereafter Pérez Zeledón, *Argument*); and by the Constituent Assembly of the Republic of Nicaragua: *Gaceta de Nicaragua*, No. 1[illegible], 28 May 1858, cited in Pérez Zeledón, *Argument*, 55. See also Decree of the Constitutional Assembly in its Legislative Character, approving the Treaty of Limits of 15 April, 1858, 4 June 1858, reproduced in *The Case of the Republic of Niccragua* (Washington, D.C., Gibson Bros, 1888), Appendix C, 40: Annexes, Vol 6, Annex 202.

any canalization contract even more important.[31] In the years after the signing of the Treaty of Limits there were many projects and agreements for canal and transit projects along the San Juan. Although none would actually materialize, it is noteworthy that Nicaragua involved Costa Rica in these projects.[32]

2.29. For example the Ayon-Chevalier Canal Contract[33] was signed in Paris on 6 October 1868. The contract required the accession of Costa Rica,[34] but soon after it was concluded it became apparent that the French party did not have the means to carry out the project and the Costa Rican Government withdrew its support.

2.30. From 1870 Nicaragua began to challenge the validity of the 1858 Treaty of Limits. It did so despite more than a decade of observance of the Treaty by both countries.[35]

2.31. On 16 March 1886, by Decrees XXXI and XXXII,[36] the Costa Rican Government created a Revenue Guard for the Colorado River, which would have at its service a national steamboat. The functions of the Colorado River Revenue Service included "[t]o reconnoitre at least once a week the Rivers San Juan, Colorado, Sarapiquí and San Carlos; the first in the whole extent that it is navigable for Costa Rica, the second in its entire extent, and the latter two along the entire stretches that are navigable by steamer." The Colorado Revenue Guard had the main mission to "prevent contraband in the waters and territories of its circumscription."

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[31] As mentioned above (paragraph 2.03), the Colorado River has always been entirely Costa Rican territory.

[32] See, e.g., Canalization Contract with Felix Belly of 1 May 1858: Annexes, Vol 2, Annex 8.

[33] See Republic of Nicaragua–M. Chevalier, Contract for the Excavation of an Interoceanic Canal across Central America (Ayon-Chevalier), 6 October 1868, Articles 53-56, especially Article 56 which provided that the refusal of Costa Rica to adhere to the present treaty will make the treaty null and void: 61 BFSP 1266: Annexes, Vol 2, Annex 11.

[34] See Costa Rica-Nicaragua, Treaty for the excavation of an Interoceanic Canal (Jiménez-Montealegre), San José, 18 June 1869, 61 BFSP 1144: Annexes, Vol 2, Annex 13 (by which Costa Rica acceded to the Ayon-Chevalier Contract).

[35] See Remarks made by the Government of Costa Rica to the Government of Nicaragua when the latter submitted to the Nicaraguan Congress its "doubts" in regard to the validity of the Treaty of Limits: Costa Rica Foreign Minister, Lorenzo Montufar, to Nicaraguan Foreign Minister, Tomás Ayón, 1 February 1870, reproduced in Pérez Zeledón, *Argument*, 274-8: Annexes, Vol 3, Annex 30.

[36] Costa Rica, Decree No XXXI establishing a maritime and customs guard at the mouth of the Colorado River, 16 March 1886, *Colección de Disposiciones Legislativas y Administrativas emitidas en el año 1886, Edición Oficial* (San José: Imprenta Nacional, 1887): Annexes, Vol 6, Annex 205; Decree No XXXII fixing the functions of the Maritime and Customs Guard on the Colorado River, 16 March 1886, *Colección de Disposiciones Legislativas y Administrativas emitidas en el año 1886, Edición Oficial* (San José: Imprenta Nacional, 1887): Annexes, Vol 6, Annex 206.

2.32. The decision of Costa Rica to establish a permanent Revenue Guard in the San Juan area met with opposition from the Nicaraguan authorities. Together with the dispute about the validity of the Treaty of Limits which had already been raised by Nicaragua, this situation induced both Parties to agree to arbitrate their differences. On 24 November 1886 a treaty was signed by Ascensión Esquivel on behalf of Costa Rica and José Antonio Román on behalf of Nicaragua.[37] By the Esquivel-Román Treaty both countries agreed to submit the question of the validity of the Treaty of Limits to the arbitration of the President of the United States. Article VI of the Esquivel-Román Treaty stipulated that if the Award found the Treaty of Limits valid, it should also decide whether Costa Rica could navigate the San Juan River with vessels of war or of the Revenue Guard. In addition, the Award would decide any other point of doubtful interpretation raised by either of the Parties. Article X of the Esquivel-Román Treaty stipulated that if the Arbitral Award found the Treaty of Limits valid, both countries would appoint commissioners to demarcate the boundary, as established in Article II of the Treaty of Limits.

2.33. Following the exchange of ratifications of the Esquivel-Román Treaty on 1 June 1887, the President of the United States of America, Grover Cleveland, accepted the duties of Arbitrator. Thereafter Costa Rica and Nicaragua attempted to settle the dispute without the need for arbitration, but were unable to reach a settlement.[38]

2.34. On 22 June 1887, Nicaragua submitted to Costa Rica 11 points it considered as of doubtful interpretation. Of particular interest is Point 8, asking whether Costa Rica was entitled to navigate the waters of the San Juan with vessels of war or of the Revenue Guard. In its reply before President Cleveland, Nicaragua argued that Costa Rica could do neither:

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[37] Costa Rica-Nicaragua, Convention to submit to the arbitration of the Government of the United States the question in regard to the validity of the Treaty of April 15, 1858 (Esquivel–Román), Guatemala, 24 December 1886, 168 CTS 371: Annexes, Vol 2, Annex 14.

[38] On 26 July 1887 the Presidents of Costa Rica and Nicaragua signed a Treaty (known as the Soto-Carazo Treaty) in an attempt to resolve the dispute and avoid the Arbitration: see *Memoria anual de la Secretaría de Relaciones Exteriores y Carteras Anexas 1888* (San José: Imprenta Nacional, 1888): Annexes, Vol 2, Annex 15. Nicaragua thereby undertook to withdraw its objections to the validity of the Treaty of Limits; only in the event that both legislatures failed to approve it would the arbitration before President Cleveland continue. The Costa Rican Congress approved the treaty in September 1887 but the Nicaraguan Congress rejected it. See J Sáenz Carbonell, *Historia Diplomática de Costa Rica (1910-1948)* (2nd edn, San José: Editorial Juricentro, 2000), 466-7.

"Vessels of the revenue service are akin to vessels of war. While they have not all the means of aggression as the former, still they are armed vessels, capable of enforcing their demands by force, and must be classed in the same category as vessels of war. Neither have the right, under a commercial license, to invade the territory, domain, or sovereignty of the Republic of Nicaragua."[39]

2.35. Costa Rica argued that it was beyond dispute that Costa Rica could navigate the San Juan with Revenue Guard vessels:

"It was stipulated in the treaty, to the benefit of Nicaragua, that Nicaraguan vessels could bring their cargoes to the Costa Rican bank of the river and unload them there; and this permission, or right, presupposes, necessarily, the correlative right of Costa Rica to watch its own banks by the only practicable means, which is the revenue police, during the whole course of the river navigable for Costa Rica.

If this only means of vigilance would not be permitted, the Costa Rican commerce would be deprived of protection and at the mercy of smuggling."[40]

In respect of men-of-war, Costa Rica argued that the principle that a port of free entry is considered accessible to men-of-war of all nations ought to apply to navigable rivers.[41]

2.36. On 22 March 1888, President Cleveland rendered his Award.[42] The first article of the Award declared the Treaty of Limits valid. The second article of the Award stated as follows:

"*Second.* The Republic of Costa Rica under said Treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the river San Juan with vessels of war; but she may navigate said river with such vessels of the Revenue Service as may be related to and connected with her enjoyment of the 'purposes of commerce' accorded to her in said article, or as may be necessary to the protection of said enjoyment."

2.37. The third article of the Award referred to each of the 11 points of doubtful interpretation presented by Nicaragua. Points 10 and 11 of the third article state:

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[39] *Reply of the Republic of Nicaragua to the Case of the Republic of Costa Rica Submitted to His Excellency Honourable Grover Cleveland, President of the United States* (Washington, D.C.: Gibson Bros, 1887) 49: Annexes, Vol 6, Annex 208.

[40] Pérez Zeledón, *Argument*, 156

[41] Ibid.

[42] Award upon the validity of the Treaty of Limits of 1858 between Costa Rica and Nicaragua, 22 March 1888: Annexes, Vol 2, Annex 16.

"10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in article VIII of the Treaty of Limits of the 15th day of April, 1858. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica in entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, 1858, does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for inter-oceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the Treaty, should be more than "advisory" or "consultative". It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favours and privileges as she, in her turn, may concede."

2.38. Pursuant to article VII of the Esquivel-Roman Treaty, both countries agreed to accept the Award unconditionally.[43] At no stage did Nicaragua challenge the validity of the Award.

(5) Implementation of the Treaty of Limits after 1888: the Alexander Awards

2.39 In accordance with article X of the Esquivel-Román Treaty, both countries appointed commissioners to demarcate the boundary line and the Commission started work on 16 June 1890. However, due to the differences as to how best to approach the demarcation, it was agreed that both countries should resort to the assistance of an external arbitrator who could resolve any disputes which arose in the field during the process.

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[43] Esquivel-Román Convention, art VII: Annexes, Vol 2, Annex 14.

2.40. Accordingly, on 27 March 1896 a Treaty was signed by Leonidas Pacheco, on behalf of Costa Rica, and Manuel C. Matus, on behalf of Nicaragua, to carry out the demarcation process.[44] According to article II of the Pacheco-Matus Convention, in the event of disagreement between the Costa Rican and Nicaraguan commissioners, an engineer appointed by the President of the United States would decide on the matter, and the demarcation process would be carried out in accordance with his decision.

2.41. The Pacheco-Matus Convention having been ratified by both countries and entered into force, United States President McKinley appointed as arbitrator an engineer, Edward Porter Alexander. The demarcation process began in 1897 and was concluded in 1900. In all, Alexander rendered five awards addressing the conflicts that had arisen between Costa Rica and Nicaragua during the demarcation process.[45] For the most part, the Alexander Awards are not relevant to the present dispute: however, the First Award of 30 September 1897 may be noted. This fixed the Atlantic terminus of the land boundary at Punta Castilla, where the right or south-east bank of the River met the sea. In so doing the Arbitrator noted that "throughout the treaty the river is treated and regarded as an outlet of commerce. This implies that it is to be considered as in average condition of water, in which condition alone it is navigable."[46]

(6) The 1916 Judgment of the Central American Court of Justice

2.42. With the construction of the Panama Canal, the pressure for an inter-oceanic waterway in Nicaragua abated. Nonetheless as a result of information that Germany was interested to open a Canal in Nicaragua, the United States sought to safeguard its security interests by concluding in February 1913 the Chamorro–Weitzel Treaty.[47] Costa Rica protested this Treaty, first to the

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[44] Pacheco-Matus Convention for the demarcation of the boundary line between Costa Rica and Nicaragua, 27 March 1896, *Papers Relating to the Foreign Relations of the United States* (Washington, D.C.: Government Printing Office, 1897), 101: Annexes, Vol 2, Annex 17.

[45] First Award rendered by the umpire, EP Alexander, San Juan del Norte, 30 September 1897; Second Award, San Juan del Norte, 20 December 1897; Third Award, San Juan del Norte, 22 March 1898; Fourth Award, Greytown, 26 July 1899; Fifth Award, Greytown, 10 March 1900. For the texts of the Alexander Awards see *Pasicrisie Internationale*, 528-39. The First Award is reprinted in Annexes, Vol 2, Annex 18.

[46] *Pasicrisie Internationale*, 531.

[47] United States-Nicaragua, Convention for the Construction of a Canal by the River San Juan (Chamorro-Weizel), Washington, D.C., 8 February 1913, *Republic of Costa Rica, Complaint before the Central American Court of Justice* (Washington, D.C.: Press of Gibson Bros., Inc. 1916) Annex L, 82-86: Annexes, Vol 2, Annex 19.

United States,[48] and then to Nicaragua,[49] on the ground *inter alia* that it had not been consulted. In the event the United States Senate rejected it.[50]

2.43. Then, on 5 August 1914, Nicaragua signed a treaty with the United States (the Chamorro-Bryan Convention) which granted the United States perpetual ownership rights for the construction and maintenance of an inter-oceanic canal through the San Juan.[51] This Treaty was signed without Costa Rica's knowledge or consent. Since the Chamorro-Bryan Treaty affected Costa Rica's rights under the Treaty of Limits and the Cleveland Award, on 24 March 1916 Costa Rica filed a case against Nicaragua before the Central American Court of Justice.[52]

2.44. In Costa Rica's argument before the Court its navigational rights were clearly set forth in the following terms:

> "The Cañas-Jerez Treaty, explained by the Cleveland Award, concedes to Costa Rica the perpetual right to free navigation in the waters of the San Juan River from its outlet in the Atlantic up to a point within three English miles of Castillo Viejo, for the purposes of commerce, whether with Nicaragua or the interior of Costa Rica, through any of the waterways of that country that flow or may flow into the San Juan; it also gives to Costa Rican vessels the right, exempt from imposts of any class, to touch at points on the Nicaragua banks of that river along the part thereof in which navigation is common, and puts Costa Rican vessels of the revenue service on the same footing with the merchant vessels of the same country (Costa Rica) in order that they may protect its rights or for the said purposes of commerce.
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> That, with regard to the San Juan River, the conventional rights of Costa Rica are, in a certain aspect, less than the corresponding rights of co-ownership (*condominio*):

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[48] Costa Rican Minister Plenipotentiary in Washington, D.C., JB Calvo, to the United States Secretary of State, William Jennings Bryan, 17 April 1913: Annexes, Vol 3, Annex 38.

[49] Costa Rican Minister in Nicaragua, F Cabezas Gómez, to Nicaraguan Foreign Minister, Diego M Chamorro, 27 April 1913: Annexes, Vol 3, Annex 39.

[50] The Treaty was presented to the Senate Foreign Relations Committee in June 1913. The Platt Amendment was introduced following a suggestion by the Nicaraguan Government in the hope that it might facilitate Senate approval. The Treaty encountered opposition not only from Costa Rica and El Salvador but also from the Democrats who considered the Platt Amendment fostered imperialistic practices by the United States. In August 1913 it was rejected by the Foreign Relations Committee. See F Rodriguez Serrano, *El Canal por Nicaragua* (Managua, Editorial Alemana, 1968) 24; LF Sibaja Chacón, *Nuestro Límite con Nicaragua* (San José, Litografía Don Bosco, 1973) 212.

[51] United States-Nicaragua, Convention for the construction of a Canal by the River San Juan (Bryan-Chamorro), Washington, D.C., 5 August 1914, 220 CTS 215: Annexes, Vol 2, Annex 20.

[52] The Central American Court of Justice was created by the General Treaty of Peace and Amity, Washington, D.C., (Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador), Washington, D.C., 20 December 1907, 206 CTS 63.

Costa Rica, for example, cannot ply that stream with war vessels as, of course, Nicaragua can do; but, on the other hand, those rights are greater than those of a mere co-owner (*copropietario*) because the Costa Rican vessels, as well merchantmen as revenue cutters, in the zone in which navigation is common, have a free course over the whole river, throughout its length and breadth, and free access, exempt from imposts, to any point on the Nicaraguan shore."[53]

2.45. Costa Rica based its position on articles VI and VIII of the 1858 Treaty of Limits, and on the 1888 Cleveland Award. Nicaragua responded to Costa Rica's demand on 25 August 1916 but confined its challenge to the jurisdiction of the Court.

2.46. On 30 November 1916, the Central American Court of Justice gave judgment in favour of Costa Rica. In doing so it held that:

"…Costa Rica possesses in the San Juan River, for purposes of commerce, permanent rights of free navigation from its outlet as far up as three miles below Castillo Viejo, and the right for her vessels to moor at all points along either bank, exempt from the imposition of any charges, in that part of the stream in which navigation is common.

It is clear, therefore, that the ownership which the Republic of Nicaragua exercises in the San Juan River is neither absolute or unlimited; it is necessarily restricted by the rights of free navigation, and their attendant rights, so clearly adjudicated to Costa Rica – the more so if it is considered that such rights, exercised for revenue and defensive purposes, are, according to the opinion of statesmen, usually confounded in their development with the sovereign powers of the *imperium*; such a concession is equivalent to a real right of use, perpetual and unalterable, that establishes the Republic of Costa Rica in the full enjoyment of practical ownership of a large part of the San Juan River without prejudice to the full ownership reserved to Nicaragua as sovereign over the territory.

By virtue of the decisions contained in the Cleveland Award, and what is held therein relating to the territorial boundaries, the following points are evident:

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[53] Annexes, Vol 2, Annex 21, 196-7 The original Spanish text reads:
"El Tratado Cañas-Jerez explicado por el Laudo Cleveland, concede a Costa Rica el derecho perpetuo de libre navegación en las aguas del río San Juan, desde su desembocadura en el Atlántico hasta tres millas inglesas antes del Castillo Viejo, para fines comerciales, ya sea con Nicaragua o con el interior de Costa Rica, por cualquiera de las vías de ésta que dan o den al río San Juan; da a las naves costarricenses la facultad de atracar, exentas de impuestos de cualquier clase, en la ribera nicaragüense del mismo río, en la parte en que la navegación es común, y equipara las embarcaciones costarricenses del servicio fiscal con las mercantes del mismo país, para que puedan proteger los derechos de ésta, o para los expresados fines comerciales.
Que en cuanto al río San Juan los derechos convencionales de Costa Rica son en cierto aspecto menores que los correspondientes al condominio: Costa Rica no puede, por ejemplo, surcar esta corriente con naves de guerra, como si puede hacerlo Nicaragua, de seguro; pero por otra parte, son mayores que los de una mera copropiedad porque los barcos costarricenses, así mercantiles como fiscales en la zona en que la navegación es común, tienen libre curso en todo el río, a lo largo y a lo ancho y libre acceso, exento de impuestos, a cualquier lugar de la ribera nicaragüense."

… The proposition that the rights of navigation on the San Juan River that were confirmed in Costa Rica do not extend to vessels of war, but simply to vessels devoted to revenue and defensive purposes – an interpretation that in no way detracts from the doctrine set forth concerning the practical ownership pertaining in great part to Costa Rica over the San Juan River because navigation with vessels of war, aside from constituting a cause for disquiet, would imply a function appropriate to territorial sovereignty."[54]

2.47. The Court went on to state that:

"Costa Rica possesses undisputed title to the right bank of the river, to the land situated within her jurisdictional limits; she has joint ownership in the ports of San Juan del Norte and in Salinas Bay; she possesses the contractual right of perpetual navigation in the river, beginning at a point three miles below Castillo Viejo, accompanied by the full privilege of transit and commerce, and Nicaragua is impressed with the duty not to interfere with navigation, but, on the contrary, to keep the course of the river open; Costa Rica enjoys also the right to moor her vessels on both banks throughout the entire zone in which navigation is common, and the rights involved in guarding and defense 'with all means within her reach'."[55]

2.48. The Court necessarily had to pronounce on Costa Rica's rights on the San Juan, since these were affected by the Bryan-Chamorro Convention. In particular the Central American Court declared that:

"…the Government of Nicaragua has violated, to the injury of Costa Rica, the rights granted to the latter by the Cañas-Jerez Treaty of Limits of [April 15, 1858], by the Cleveland Award of [March 22, 1888], and by the Central American Treaty of Peace and Amity of [December 20, 1907]."[56]

2.49. As a result of this judgment (and the judgment rendered by the Court in a parallel case presented by El Salvador against Nicaragua about its own rights on the Gulf of Fonseca[57]), Nicaragua terminated its participation in the Court.

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[54] Ibid, 219-220.

[55] Ibid, 222. The original Spanish text reads:
"Costa Rica tiene derecho indiscutido a la margen derecha del río; al suelo colocado dentro de sus límites jurisdiccionales; posee el condominio en los puertos de San Juan del Norte y en la Bahía de Salinas, el derecho contractual de perpetua navegación en el río, empezando desde tres millas abajo del Castillo Viejo, comprensivo de la amplia facultad de tránsito y de comercio, y que impone a Nicaragua el deber no entrabar esa navegación, y el de tener, por el contrario, expedito el curso del río; los de atracar en sus dos riberas en toda la zona en que la navegación es común; y los que conciernen a su guarda y defensa 'con toda la eficacia que estuviere a su alcance'."

[56] Ibid, 229.

[57] *Republic of El Salvador v Republic of Nicaragua*, Central American Court of Justice, 9 March 1917, (1917) 11 *AJIL* 674.

Its doing so, however, could not affect the status of decisions already given as *res judicata*.[58]

(7) Later developments

2.50. In the late 1930s, there was renewed interest between Costa Rica and Nicaragua in the canalization of the San Juan. The Governments of both countries favoured the construction of a Canal terminating at Lake Nicaragua, since there was no intention to connect it to the Pacific Ocean. The result was the Treaty known as the Zuñiga Montufar–Cordero Reyes Treaty,[59] signed on 5 April 1940 and duly ratified by both countries. But (as with previous agreements for a canal by way of Lake Nicaragua), the canal works were never seriously begun. The Treaty expired five years after its signature in accordance with its own terms: see article X. Article III of the Treaty acknowledged Costa Rica's rights of free navigation and in fact extended its rights to the whole of the San Juan from its source in Lake Nicaragua to its outlet on the Caribbean.

2.51. In December 1948, the faction which had lost the civil war in Costa Rica earlier that year attempted to invade the country, having the support of Nicaragua under Anastasio Somoza's regime. The Government of Costa Rica requested assistance from the Inter-American system with respect to these events, invoking the Inter-American Reciprocal Assistance Treaty (the Rio Treaty). As a means of settling the issue, both countries signed the Pact of Amity of 21 February 1949.[60] Through this Pact they committed to solve any difference among themselves through peaceful means of settling international disputes. To achieve this goal, they accepted the application of the Inter American Treaty for the Peaceful Settlement of Disputes (the Pact of Bogotá), even though that Treaty had not yet entered into force.

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[58] A Chamber of the Court paid careful attention to the *El Salvador/Nicaragua* judgment in its 1992 decision on the status of the Gulf of Fonseca: *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening)*, I.C.J. Reports 1992, p. 351, in particular 600-1 (paras. 402-3).

[59] Costa Rica-Nicaragua, Convention for the Canalization of the San Juan River (Cordero-Zúñiga), San José, 5 April 1940 (in force 21 June 1940), Ministerio Relaciones Exteriores, *Convención para la canalización del Río San Juan y otros particulares relacionados con dicha canalización* (San José: Imprenta Nacional, 1940), 15-22: Annexes, Vol 2, Annex 22.

[60] Costa Rica-Nicaragua, Pact of Amity (Sevilla-Esquivel), Washington, D.C., 21 February 1949 (in force 15 July 1949), 1465 UNTS 221: Annexes, Vol 2, Annex 23.

2.52. In 1955, the faction which had lost the 1948 Costa Rican civil war made a further attempt, with the aid of the same Nicaraguan Government, to take over the Government of Costa Rica. The conflict was resolved through the intervention of the Organization of American States. On 9 January 1956 the two States concluded an Agreement pursuant to Article IV of the Pact of Amity of 21 February 1949.[61] Among other things, they agreed to facilitate and expedite transit through the San Juan and promised to cooperate to safeguard the common border.

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[61] **Costa Rica-Nicaragua, Agreement pursuant to Article IV of the Pact of Amity (Fournier-Sevilla), Washington, D.C., 9 January 1956, 1465 UNTS 233, 234: Annexes, Vol 2, Annex 24.**

Chapter 3

The Dispute before the Court

A. Overview

3.01. Prior to 1980, apart from sporadic and occasional incidents, Costa Rica did not encounter difficulties in exercising its rights of free and perpetual navigation on the San Juan River. The period from 1980 to 1998 records some Nicaraguan breaches of Costa Rica's rights, but in this period these were not of a systematic or permanent character.

3.02. By contrast in the period after July 1998, Nicaragua adopted a policy which involved systematic and permanent violations of Costa Rica's rights, which continue to the present day and which effectively amount to an outright denial of these rights.

3.03. Despite repeated attempts by Costa Rica to seek a diplomatic solution to the dispute, no settlement has been reached. As a last resort, on 29 September 2005, Costa Rica presented its case to this Court.

B. Nicaragua's violations of Costa Rica's rights between 1980 and 1998

3.04. Nicaragua's violations of Costa Rica's rights of free and perpetual navigation in the period between 1980 and 1998 were of an *ad hoc* and temporary character.

3.05. An example is a shooting incident involving a Costa Rican official vessel in 1980. On 4 November 1980 the vessel, which was transporting Costa Rican Ministry of Health officials on the River, was shot at by the Nicaraguan Army.[62] Costa Rica protested this action on 5 November 1980 and Nicaragua responded on 12 November 1980. In its response, Nicaragua apologised for the incident and stated that it did not reflect the official position of the Nicaraguan Government. Nicaragua pledged full respect for Costa Rica's rights of free navigation.[63] However, earlier the Nicaraguan authorities declared that Costa Rica ought to give notice to Nicaragua each time it entered the River, in order to prevent Costa Rican vessels being confused with irregular groups operating in the area.[64] Costa Rica rejected the condition proposed by Nicaragua and reaffirmed its rights of free and perpetual navigation on the River.[65]

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[62] "Sandinista guards attack Costa Ricans", *La Nación*, San José, 6 November 1980: Annexes, Vol 5, Annex 110.

3.06. Further incidents occurred in 1982 and 1983. On 6 June 1982 a Nicaraguan Army Patrol intercepted a Costa Rican vessel transporting tourists on the San Juan River from Barra del Colorado, Costa Rica, to Puerto Viejo de Sarapiquí, also in Costa Rica. The Patrol required the passengers to disembark from the vessel and proceeded to question them, noting their details in a register. The Patrol then indicated that it was forbidden to transport tourists in Costa Rican vessels through the San Juan, particularly North American and European tourists.[66] This violation was duly protested by the Costa Rican Foreign Ministry on 8 June 1982.[67] Nicaragua did not respond.

3.07. On 13, 20 and 27 June 1982 Costa Rican vessels transporting passengers through the San Juan were again stopped. Passengers of the vessels were searched and required to produce identification.[68]

3.08. On 4 July 1982, Nicaraguan Army officers demanded payment for a "departure clearance" ("*derecho de zarpe*"). This action was protested by Costa Rica on 16 July 1982.[69] Nicaragua did not respond.

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[63] Nicaraguan Ambassador in Costa Rica, Javier Chamorro Mora, to Costa Rican Foreign Minister, Bernd Niehaus Quesada, Note No. E.N.1323/80, 12 November 1980: Annexes, Vol 3, Annex 40; "Nicaragua conditions navigation on the waters of the San Juan River", *La Nación*, San José, 8 November 1980: Annexes, Vol 5, Annex 111.

[64] Ibid.

[65] Ibid.

[66] Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Minister of Public Security, Angel Edmundo Solano, 7 June 1982: Annexes, Vol 6, Annex 223. See also "New protest to Nicaragua", *La Nación*, San José, 11 June 1982: Annexes, Vol 5, Annex 113.

[67] Costa Rican Foreign Minister, Fernando Volio, to Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar Ramón Téllez, Note No. D.M.133-82, 8 June 1982: Annexes, Vol 3, Annex 41.

[68] Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 5 July 1982: Annexes, Vol 6, Annex 224.

[69] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 126-82, 16 July 1982: Annexes, Vol 3, Annex 42.

3.09. From 16 to 22 July 1982, the Nicaraguan Army prohibited Costa Rican vessels from navigating the San Juan. Costa Rica protested this action.[70]

3.10. Nicaragua responded on 2 August 1982 that the actions carried out by the Nicaraguan Army were sovereign acts undertaken in order to preserve the security and internal order of Nicaragua. It was further stated that the actions taken by local Nicaraguan authorities which restricted Costa Rica's rights established in the Treaty of Limits would cease and that the perpetrators would be punished.[71] On 19 August 1982 Costa Rica responded to Nicaragua's letter of 2 August 1982, rejecting Nicaragua's interpretation of its authority to impose restrictions on Costa Rican navigation.[72] On 6 September 1982 Nicaragua responded, affirming the position taken in its letter of 2 August with respect to its prerogative to impose restrictions on Costa Rica's rights of free navigation.[73]

3.11. On 23 February 1983, members of the Nicaraguan Army stopped two Costa Rican journalists navigating the San Juan. These journalists were searched and their belongings were seized, including notebooks, film and recording tape. Costa Rica protested this action on 8 March 1983.[74]

3.12. In addition to the restrictions imposed on navigation with tourists, Nicaragua committed other violations of Costa Rica's rights to free navigation in this period. Among the most important were the imposition of timetables, whereby Costa Rican vessels could only navigate between 6 am and 5 pm; the obligation to stop at Army posts and allow personal searches as well as the seizure of personal belongings, and the imposition of a charge for navigation on the San Juan. Nicaragua argued that it was only exercising revenue control activities and applying security controls, referring to the movement of the

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[70] Costa Rican Foreign Minister, Fernando Volio, to Nicaraguan Chargé d'Affaires to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 127-82, 20 July 1982: Annexes, Vol 3, Annex 43.

[71] Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar Ramón Téllez, to Costa Rican Foreign Minister, Fernando Volio Jiménez, Note No. E.N. 789/82, 2 August 1982: Annexes, Vol 3, Annex 44.

[72] Costa Rican Foreign Minister, Fernando Volio, to Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 189-82, 19 August 1982: Annexes, Vol 3, Annex 45.

[73] Ambassador of Nicaragua in Costa Rica, Rogelio Ramírez Mercado, to Costa Rican Foreign Minister, Fernando Volio Jiménez, Note No. E.N. 865/82, 6 September 1982: Annexes, Vol 3, Annex 46.

[74] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Ambassador to Costa Rica, Rogelio Ramírez Mercado, Note No. D.M. 014-83, 8 March 1983: Annexes, Vol 3, Annex 47.

"*Contras*", contra-revolutionary groups operating in the region. The then Deputy Minister of Foreign Affairs of Nicaragua indicated that the vigilance exercised was necessary to prevent enemy individuals to the Nicaraguan Government entering Nicaragua as part of a tourist group.[75] He indicated that the measures taken by Nicaragua in respect of Costa Rican navigation with tourists were not intended to restrain Costa Rica's rights of free navigation but were taken to safeguard the security of Nicaragua.[76] Similar declarations from Nicaraguan officials followed, arguing that Nicaragua could impose restrictions and had the right to stop and detain any person deemed by Nicaragua to be a danger to the State. Costa Rica, on the other hand, protested and insisted upon its rights of free navigation in accordance with the relevant instruments.[77]

3.13. On 4 April 1983 delegations from Costa Rica and Nicaragua met in San Juan del Sur, Nicaragua, to discuss these disagreements. This meeting did not result in any agreement.[78] Another high level meeting took place on 14 April 1983 in Liberia, Costa Rica. At that meeting, Nicaragua acknowledged that there had been violations of Costa Rica's rights. *La Nación* reported that:

> "Dr. Sergio Ramírez Mercado, member of Nicaragua's National Reconstruction Junta, announced yesterday [in Liberia], in a meeting with delegates from our Government [Costa Rican], that his country will respect gradually the right of free navigation of Costa Rican vessels in the San Juan River.
>
> The official added that within a non-specified term, they would totally obey the provisions of the Cañas-Jerez treaty and the Cleveland Award, which allow Costa Rica the free navigation on that waterway."[79]

3.14. Soon after the bilateral meeting of 14 April 1983, Costa Rican navigation on the San Juan returned to normal. But as a result of the increased security threat caused by the Nicaraguan civil war, there was in fact little Costa Rican navigation on the River from 1984 until the end of the conflict in 1989.[80] The violence and the effects of the civil war in Nicaragua made most riparians leave the region. Even the Costa Rican police temporarily suspended navigation on the San Juan during that period due to the increased security risks.[81]

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[75] "Nicaraguans announce control on the San Juan", *La Nación*, San José, 17 June 1982: Annexes, Vol 5, Annex 115.

[76] Ibid.

[77] "Free passage along the San Juan River is demanded", *La Nación*, San José, 16 June 1982: Annexes, Vol 5, Annex 114. See also "Problems on the San Juan River continue", *La Nación*, San José, 4 July 1982: Annexes, Vol 5, Annex 116.

[78] "Today will take place a high level meeting with Nicaragua", *La Nación*, San José, 4 April 1983: Annexes, Vol 5, Annex 119. See also "Meeting with Nicaraguans failed", *La República*, San José, 5 April 1983: Annexes, Vol 5, Annex 120.

[79] "Ramirez offers gradual respect to navigation on the San Juan River", *La Nación*, San José, 15 April 1983: Annexes, Vol 5, Annex 122. See also "Nicaragua guarantees freedom on the San Juan River", *La República*, San José, 15 April 1983: Annexes, Vol 5, Annex 121.

3.15. After the end of the Nicaraguan civil war in 1989, Costa Rican riparians gradually returned to the region.

3.16. In February 1994, the Nicaraguan Army began charging passengers travelling on Costa Rican vessels a fee of US$5 to navigate the San Juan.[82] In March 1994 Nicaragua announced that it would impose unilateral migration controls on the San Juan to Costa Rican tourism, in addition to a charge of US$5.00 for a tourism card.[83] The Nicaraguan Ambassador to Costa Rica declared at that time:

> "I obviously respect the interpretation made by Foreign Affairs Minister Niehaus, but my country makes a sovereign interpretation of the Cañas-Jerez Treaty, since when it was signed tourism did not exist; and commerce was foreseen as an exchange of merchandise."[84]

This new charge, imposed by force, was applied to all passengers navigating the River.[85]

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[80] Affidavit of Armando Perla Perez, 28 January 2006: Annexes, Vol 4, Annex 92; and Affidavit of Windel Hodgson Hodgson, 28 January 2006: Annexes, Vol 4, Annex 93.

[81] Affidavit of Carlos Luis Alvarado Sánchez, 27 January 2006: Annexes, Vol 4, Annex 88; and Affidavit of Daniel Soto Montero, 27 January 2006: Annexes, Vol 4, Annex 89.

[82] "$5 to navigate on the San Juan River" *La Nación*, San José, 10 March 1994: Annexes, Vol 5, Annex 126. As reported by the Costa Rican newspaper *La Nación*, the Nicaraguan Army imposed the payment of this fee by force, and even opened fire upon Costa Rican vessels in order to enforce payment.

[83] Nicaraguan Foreign Minister, Ernesto Leal, to Costa Rican Foreign Minister, Bernd Niehaus Quesada, Note No. 940284, 21 March 1994: Annexes, Vol 3, Annex 48.

[84] "Conflict with the Nicaraguans due to tourism on the San Juan", *La República*, San José, 5 March 1994: Annexes, Vol 5, Annex 123.

[85] "Ticos were machine-gunned at the San Juan River", *La Nación*, San José, 8 March 1994: Annexes, Vol 5, Annex 124.

3.17. Costa Rica protested this action on 15 March 1994.[86] Nicaragua's response was communicated on 21 March 1994.[87] In this communication, Nicaragua formulated for the first time an interpretation of Costa Rica's rights of free navigation. It argued that the phrase "purposes of commerce" in article VI of the Treaty of Limits should be interpreted in a restrictive way. Nicaragua's note of 21 March 1994 stated:

> "…the [Cañas-Jerez] Treaty establishes that the Republic of Costa Rica "shall have the perpetual rights of free navigation in the said waters… *con objetos de comercio*" and not for other type of activities. Therefore, the expression in the Treaty "***con objetos de comercio***", excludes any other activity, and the terms of the Treaty should be interpreted in the standard sense they had at the time and, being it a Treaty of Limits, it should be interpreted in a restrictive way."[88]

Additionally, Nicaragua argued that the charge for the tourist card was not a toll but a "measure of migration control".[89]

3.18. On 22 March 1994 the Nicaraguan Government stopped charging Costa Rican nationals for the tourist card, although the charge remained in respect of other foreign nationals on Costa Rican vessels.[90] Costa Rica continued to reject the charge in its modified version.[91]

3.19. As a result of the imposition of the charge, all Costa Rican vessels were obliged to stop at the Nicaraguan Army posts. There were several incidents where Costa Rican vessels that did not stop were shot at. For example, on 6 March 1994 a Nicaraguan Army officer with an AK-47 shot at three Costa Rican boats.[92] Costa Rica protested this action and requested that Costa Rica's rights to free and perpetual navigation on the San Juan be respected.[93] Although Nicaragua responded that the tourism card would be charged only to foreigners from third countries[94] and not to Costa Ricans, the charges continued intermittently.

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[86] This note is referred to in the note from Nicaraguan Foreign Minister, Ernesto Leal, to Costa Rican Foreign Minister, Bernd Niehaus Quesada, Note No. 940284, 21 March 1994: Annexes, Vol 3, Annex 48, which records Costa Rica's objection.

[87] Nicaraguan Foreign Minister, Ernesto Leal, to Costa Rican Foreign Minister, Bernd Niehaus Quesada, Note No. 940284, 21 March 1994: Annexes, Vol 3, Annex 48.

[88] Ibid.

[89] Ibid.

[90] "Foreign Ministers will analyze the transit on the San Juan River", *La Nación*, San José, 13 April 1994: Annexes, Vol 5, Annex 129.

[91] "Niehaus rules out arbitration", *La Nación*, San José, 20 April 1994: Annexes, Vol 5, Annex 130.

[92] "Ticos were machine-gunned at the San Juan River", *La Nación*, San José, 8 March 1994: Annexes, Vol 5, Annex 124.

3.20. A new Costa Rican administration was inaugurated on 8 May 1994 and continued to pursue a settlement of the dispute. As an outcome of high level contacts, on 5 June 1994, the Ministers of Tourism of Costa Rica and Nicaragua signed two Agreements of Understanding. One of these was general in scope; the other dealt specifically with tourism activity on the San Juan.[95] By the Agreement of Understanding on the Tourist Activity in the Border Zone of the San Juan River, both Ministers agreed to develop joint sustainable tourism in the San Juan area, with the aim of establishing a zone of free transit between the two countries and of promoting mutual investment and coordinated development. Through this Agreement, it was recognized that both countries could establish controls on their own vessels carrying out tourist activities. Unfortunately neither of these Agreements was implemented.

C. Nicaragua's violations from 1998 to the present

3.21. Until July 1998 Costa Rica enjoyed free navigation of official vessels and official personnel carrying their service arms on the San Juan. The prohibition by Nicaragua of Costa Rica's free navigation by official personnel and official vessels in July 1998 was unilateral and in breach of Costa Rica's rights, as further particularised in Chapter 4.

3.22. Nicaragua did not communicate its decision to prohibit navigation by official Costa Rican vessels and personnel carrying their service arms through regular channels. On 14 July 1998 a Nicaraguan Army officer came to Costa

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[93] "Costa Rica demands Nicaraguans to withdraw charge on the San Juan", *La República*, San José, 17 March 1994: Annexes, Vol 5, Annex 128.

[94] Nicaraguan Foreign Minister, Ernesto Leal, to Costa Rican Foreign Minister, Bernd Niehaus Quesada, Note No. 940284, 21 March 1994: Annexes, Vol 3, Annex 48.

[95] Agreement of Understanding between the Ministries of Tourism of the Republic of Costa Rica and the Republic of Nicaragua, Barra del Colorado, Costa Rica, 5 June 1994: Annexes, Vol 2, Annex 25; and Agreement of Understanding between the Ministries of Tourism of the Republic of Costa Rica and the Republic of Nicaragua on the tourist activity in the border zone of the San Juan River, 5 June 1994, Barra del Colorado, Costa Rica: Annexes, Vol 2, Annex 26.

Rican territory and informed Costa Rican police officials that from that day on they would require express permission to navigate the San Juan carrying their service arms.[96]

3.23. After the Nicaraguan decision was made known to Costa Rica, the Government of Costa Rica initiated a number of high level contacts with the Nicaraguan authorities through the Ministry of Public Security. As a result, Costa Rica announced that the Nicaraguan authorities had lifted the restrictions imposed on Costa Rican navigation, in consequence of what was perceived to be an understanding reached on 16 July 1998.[97] Despite this announcement, the restrictions continued. On 30 July 1998, the Nicaraguan Minister of Defence, Mr Jaime Cuadra and the Costa Rican Minister of Public Security, Mr Juan Rafael Lizano concluded an agreement, known as the Cuadra-Lizano Joint Communiqué. It provided for navigation of Costa Rican police vessels carrying service arms, and that Costa Rica would give notice to the Nicaraguan authorities who could accompany the Costa Rican police vessels if they chose to. It was acknowledged that Costa Rican police vessels could navigate the River even if the Nicaraguan authorities failed to accompany them.[98] On 11

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[96] In a report by the Costa Rican Atlantic Police Command, the notification of Nicaragua's prohibition was recorded in the following way:
"By July 14 of 1998, at the 15:10 hours, First Lieutenant Álvaro Ríos Cárdenas came to the Delta Costa Rica Police Post, named Delta No. 7. Mr. Ríos identified himself as the Chief of the Nicaraguan Army Post located at the Nicaragua delta in front of the Costa Rican Post and he presented himself to Inspector William Herrera-Chávez, who was the Chief of the Costa Rican Atlantic Command Police Unit and he informed him verbally that the reason of his visit was to inform him of the instructions given to him by Colonel Lieutenant Orlando Talavera, Chief of the South Detachment of the Nicaraguan Army, and that the passage through the San Juan River is banned as of that time and date for any Costa Rican authority." See Intendent Commander in service of the Atlantic Command, Sarapiquí, Daniel Soto Montero, to Costa Rican Foreign Ministry, 14 February 2006: Annexes, Vol 6, Annex 240. This incident was also recorded by the press: "Nicas are unbending with Police", *La Nación*, San José, 23 July 1998: Annexes, Vol 5, Annex 136.

[97] "Prohibition lifted", *La Nación*, San José, 17 July 1998: Annexes, Vol 5, Annex 134. In this press article, the Nicaraguan Defence Minister was quoted as saying that "everything will be normalized as it had been occurring for many years." Furthermore, it was reported that: "a similar opinion was issued yesterday by Nicaraguan Commander-in-Chief, General Joaquin Cuadra, according to AFP, who stated that the incident 'is nothing more than a misunderstanding regarding the manner in which military vessels must transit on the river.'"

[98] Cuadra-Lizano Joint Communiqué, 30 July 1998: Annexes, Vol 2, Annex 28. During the press conference which followed the signing of the Communiqué, the Nicaraguan Minister of Defence stated that "Costa Rica has always travelled on the river and they are not being denied the right to travel on it and no one is taking away the fact that the river belongs to Nicaragua", thereby acknowledging Costa Rica's continuous exercise of its navigational rights, "Border agreement with Nicas", *La Nación*, San José, 31 July 1998: Annexes, Vol 5, Annex 141. The President of Nicaragua explained the contents of the Joint Communiqué as follows: "this is neither an agreement nor anything that has an obligatory sense, it is only a communiqué that serves as a guideline between two neighbouring countries that face a misunderstanding": "Agreement criticized: new practices can be dangerous", *La Prensa*, Managua, 1 August 1998: Annexes, Vol 5, Annex 144. Evidently the Nicaraguan understanding at the time was not that Costa Rican police had misused Costa Rica's navigational rights by carrying their service arms whilst transiting the San Juan, but rather that the whole issue was due to a misunderstanding between Nicaraguan military authorities and Costa Rican police authorities which the Joint Communiqué was intended to solve.

August 1998, just a few days after the Nicaraguan President had publicly defended the agreement,[99] Nicaragua declared that it considered the Cuadra-Lizano Joint Communiqué to be null and void.[100] Costa Rica did not accept this unilateral declaration.[101] The dispute in respect of police navigation with service weapons remained unresolved.

3.24. After the situation with the navigation of official personnel and official vessels deteriorated, Nicaragua accelerated the imposition of restrictions and charges on Costa Rican navigation. By 2001, Nicaragua had imposed a so-called "departure clearance certificate" ("*derecho de zarpe*") of US$25, charged only on Costa Rican vessels navigating the San Juan River. It had also re-established a US$5 charge for a tourism card and an immigration tax of US$4 for Costa Ricans. Further, Nicaragua required that all Costa Rican vessels stop at every Nicaraguan Army post along the River for inspection, permission to proceed and the payment of those charges.[102]

3.25. For a period Nicaragua also imposed an obligation to use the Nicaraguan flag, a measure that was re-imposed in October 2005 in response to Costa Rica instituting these proceedings before the International Court of Justice.[103]

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[99] "Nicaragua forfeited", *La Prensa*, Managua, 31 July 1998: Annexes, Vol 5, Annex. 142. The Nicaraguan President is quoted as saying that he "…justified the new position adopted by Nicaragua because they recognized our sovereignty… I believe that what we have done is to place stairs so that they can get out of the storm, which, in many cases, was the media's storm. We haven't yielded at any time; they must consult and notify us to navigate in such a way."

[100] Acting Nicaraguan Foreign Minister, Carlos Gurdián Debayle, to Costa Rican Foreign Minister, Roberto Rojas, Note No. VM/08/0685/98, 11 August 1998: Annexes, Vol 3, Annex 49.

[101] Costa Rican Foreign Minister, Roberto Rojas, to Acting Nicaraguan Foreign Minister, Carlos R. Gurdián Debayle, Note No. DM- 097-98, 12 August 1998: Annexes, Vol 3, Annex 50.

[102] Costa Rican Deputy Foreign Minister, Elayne Whyte, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DVM-111-01, 18 April 2001: Annexes, Vol 3, Annex 70; Costa Rican Foreign Minister, Roberto Rojas to Nicaraguan Foreign Minister, Francisco Xavier Aguirre, Note No. DM-207-2001, 9 May 2001: Annexes, Vol 3, Annex 71; Affidavit of Notary Sergio Gerardo Ugalde Godínez, 5 May 2001: Annexes, Vol 4, Annex 83.

[103] Costa Rican Foreign Minister, Roberto Tovar Faja, to Nicaraguan Foreign Minister, Norman Caldera Cardenal, Note No. DM-484-05, 20 October 2005: Annexes, Vol 3, Annex 81; Mr Jorge Lao Jarquín and Mr Santos Arrieta Flores to Costa Rican Foreign Minister Tovar, 22 November 2005: Annexes, Vol 6, Annex 238; Municipal Mayor of San Carlos, Costa Rica, Lic Alfredo Córdoba Soro, to Director of Foreign Policy, Costa Rican Foreign Ministry, Lic José Joaquín Chaverri Soevers, Note No. AM-1315-2005, 18 October 2005: Annexes, Vol 6, Annex 235; "Nicaragua conditions passing of Costa Rican vessels", *La Nación*, San José, 16 October 2005: Annexes, Vol 5, Annex 185; "Costa Rican vessels will bear the Nicaraguan Flag", *La Prensa*, Managua, 17 October 2005: Annexes, Vol 5, Annex 186; "Nicaragua demands a Visa and Passport on the River", *La Nación*, San José, 30 October 2005: Annexes, Vol 5, Annex 189; "Costa Rican Foreign Affairs Minister seeks dialogue regarding visas and flags", *El Nuevo Diario*, Managua, 1 November 2005: Annexes, Vol 5, Annex 190.

3.26. Additionally, in response to Costa Rica instituting these proceedings before the Court, since October 2005 Nicaragua imposed an obligation on all Costa Ricans to obtain a visa in order to enter Nicaraguan territory and made this a requirement for navigating the San Juan.[104] Thus Costa Ricans are required to obtain and carry a passport bearing a Nicaraguan visa in order to use the San Juan, even when transiting from one part of Costa Rican territory to another.

3.27. Nicaragua also re-imposed timetables for navigation on the San Juan. Costa Rican vessels are not allowed to navigate between 5 pm and 6 am.[105]

3.28 Additionally, Nicaraguan authorities have banned Costa Rican residents of the Costa Rican bank area from fishing for subsistence purposes on the River. This ban is being enforced by measures including detention of those fishing or carrying fish and the seizure of their belongings including their boats, a measure which effectively also denies their right to navigate on the River.[106]

3.29 More recently Nicaragua has declared, through its Foreign Minister, that navigation by local Costa Rican residents was allowed by Nicaragua as a courtesy but not as of right.[107] In Nicaragua's view, navigation for communication purposes, such as going to school, health centres, shopping or simple communication between towns and peoples, was not for purposes of commerce: such activities might be permitted as a courtesy but could be prohibited at any time.[108]

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[104] Nicaragua requires Costa Ricans entering Nicaraguan territory to obtain a consular visa: Decree No. 70-2005, 12 October 2005, amending Decree No. 57-2005, 31 August 2005. Prior to 12 October 2005, Costa Ricans did not require a visa to enter Nicaraguan territory.

[105] See Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83.

[106] See Affidavit of Leonel Morales Chacón, 6 July 2006: Annexes, Vol 4, Annex 106; Affidavit of Erick Maikol Martinez Lopez, 6 July 2006: Annexes, Vol 4, Annex 107; Affidavit of Victor Julio Vargas Hernández, 6 July 2006: Annexes, Vol 4, Annex 105; Affidavit of Josefa Alvarez Aragon, 6 July 2006: Annexes, Vol 4, Annex 109; and Affidavit of Jose Moreno Rojas, 6 July 2006: Annexes, Vol 4, Annex 108.

[107] Nicaraguan Foreign Minister, Norman Caldera Cardenal, to Costa Rican Foreign Minister, Roberto Tovar Faja, Note No. MRE/DM-JI/1284/11/05, 9 November 2005: Annexes, Vol 3, Annex 82.

[108] Ibid.

D. Attempts by Costa Rica to resolve the dispute

3.30. Costa Rica has proposed diplomatic solutions to Nicaragua on many occasions, including the use of available mechanisms of peaceful resolution, such as mediation through the Organization of American States, by other Latin American States, the European Union or Spain, and international arbitration. The Government of Nicaragua has rejected all these proposals.

3.31. In respect of the dispute concerning navigation of the River by Costa Rican police, on 30 July 1998 the Cuadra-Lizano Joint Communiqué was signed. However, as noted above, on 11 August 1998 the Minister of Foreign Affairs of Nicaragua communicated to the Minister of Foreign Affairs of Costa Rica that Nicaragua rejected the Cuadra-Lizano Joint Communiqué and its contents.[109] Costa Rica did not accept this unilateral declaration and by note of 12 August 1998, it affirmed its intent to search for a diplomatic solution.[110] Nicaragua responded on 28 August 1998, but made no concrete suggestion, nor did it propose another meeting.[111]

3.32. On 8 October 1998 the Deputy Ministers of Foreign Affairs of Costa Rica and Nicaragua met in El Salvador. Costa Rica proposed mediation of the European Union to resolve the dispute, a proposal immediately rejected by Nicaragua.[112]

3.33. On 11 May 1999 the Costa Rican Deputy Foreign Minister sent a note and a draft proposal to his Nicaraguan counterpart, requesting that formal negotiations recommence.[113] Although Nicaragua acknowledged receipt of the note,[114] it did not respond to Costa Rica's proposal, nor did it make any counter-proposal.

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[109] Acting Nicaraguan Foreign Minister, Carlos R. Gurdián Debayle, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. VM/08/0685/98, 11 August 1998: Annexes, Vol 3, Annex 49.

[110] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister by Law, Carlos R. Gurdián Debayle, Note No. DM-097-98, 12 August 1998: Annexes, Vol 3, Annex 50. It states:
"…In regard to the comment made in your letter referring to your Illustrious Government's willingness to work based on the international legal documents that determine Nicaragua's and Costa Rica's rights on the San Juan River, I should like to reiterate that Costa Rica has never intended to exercise any rights other than those granted by said instruments and, in this respect, it reiterates its readiness to maintain the channels of negotiation that should always exist between sister nations open, insofar as Nicaragua is equally willing and prepared to appoint appropriately authorized persons to carry out negotiations. In view of the above, I would like to request Your Excellency to indicate the steps which should be taken in order that the goodwill expressed in your letter may result in the appropriate resolution to this dispute."

[111] Nicaraguan Acting Foreign Minister, Carlos Roberto Gurdián, to Costa Rican Foreign Minister, Roberto Rojas, Note No. MRE/98/02638, 28 August 1998: Annexes, Vol 3, Annex 51.

[112] "Ticos requested European mediation", *La Tribuna*, Managua, 9 October 1998: Annexes, Vol 5, Annex 153.

3.34. The Deputy Ministers of Foreign Affairs of both countries met in August 1999 in Miami, and in December 1999 in San José, but again no agreement was reached.[115]

3.35. In the context of a maritime delimitation negotiation between Costa Rica and Nicaragua, it was proposed that the issue of the San Juan River dispute be discussed once again.[116] In a meeting between the Deputy Ministers of Foreign Affairs of both countries, held in Managua on 16 February 2000 a draft proposal was accepted.[117] This proposal was discussed by the Ministers of Foreign Affairs of both countries when they met on the occasion of the Ninth EU-Rio Group Summit which took place on 24 February 2000 in Portugal.[118] Both Ministers indicated their approval, but the Nicaraguan Minister requested more time to examine the draft agreement. A few days later Nicaragua sent a drastically modified version of the draft agreement previously approved by the Deputy Ministers. A Costa Rican counter-proposal, more consistent with the draft which had been originally accepted by the Deputy Ministers, was rejected in its entirety by Nicaragua.

3.36. In this context, on 3 March 2000 the Government of Costa Rica requested the assistance of the Organization of American States (OAS) to find a solution to the dispute.[119] The Permanent Council of the OAS convened an emergency meeting on 8 March 2000 where both countries were given the opportunity to address the Council and express their respective positions. Costa Rica's address to the Permanent Council gave an overview of Nicaragua's actions and of the steps taken by Costa Rica to resolve the differences, including the importance of resorting to the appropriate mechanisms of the Inter-American system, in particular mediation and arbitration.[120] The Nicaraguan Foreign Minister's speech focused on the inapplicability of the Inter-American system in relation to the dispute.[121] With the support of the Permanent Council it was agreed that the Secretary General of the OAS would seek to facilitate negotiations between the two governments.[122] Consequently, meetings took place in Washington, D.C., Managua and San José. At the last of those meetings, on 3 April 2000 in San José, it was announced that, despite the good offices and active involvement of the OAS Secretary General, no agreement to resolve the dispute could be reached and that the dispute remained unresolved.[123]

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[113] Costa Rican Deputy Foreign Minister, Walter Niehaus, to Nicaraguan Deputy Foreign Minister, Guillermo Argüello Poessy, Note No. DVM: 607–99, 11 May 1999: Annexes, Vol 3, Annex 54.

[114] Nicaraguan Deputy Foreign Minister, Guillermo Argüello Poessy, to Costa Rican Deputy Foreign Minister, Walter Niehaus, Note No. MRE/99/01347, 12 May 1999: Annexes, Vol 3, Annex 55.

[115] See Affidavit of Walter Niehaus Bonilla, 23 February 2006: Annexes, Vol 4, Annex 104.

[116] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Eduardo Montealegre, Note No. DM 015-2000, 21 January 2000: Annexes, Vol 3, Annex 56; and the Nicaraguan response: Nicaraguan Foreign Minister, Eduardo Montealegre, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/DM/3882/01/00, 28 January 2000: Annexes, Vol 3, Annex 57; Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Eduardo Montealegre, Note No. DM-079-2000, 15 February 2000: Annexes, Vol 3, Annex 58; and the Nicaraguan response: Nicaraguan Foreign Minister, Eduardo Montealegre, to Costa Rican Foreign Minister, Roberto Rojas López, Note MRE/DM/3965/02/00, 16 February 200[illegible] Annexes, Vol 3, Annex 59.

[117] Affidavit of Walter Niehaus Bonilla, 23 February 2006: Annexes, Vol 4, Annex 104.

[118] IX Ministerial Summit, European Union and Group of Rio, 24 February 2000, Vilamoura, Portugal.

3.37. The good offices of the OAS having failed, the Costa Rican Foreign Minister proposed recourse to mediation by letter of 10 April 2000.[124] The Nicaraguan Foreign Minister responded by letter on 6 May 2000, rejecting Costa Rica's proposal.[125] Costa Rica replied on 22 May 2000, emphasising that there was a significant divergence of opinion between Costa Rica and Nicaragua as to the substance of the dispute and its efforts to seek a resolution.[126]

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[119] "Costa Rica declares bilateral dialogue exhausted, Government requests mediation by the OAS", *Press Release, Press Office of the Ministry of Foreign Affairs of Costa Rica*, 3 March 2000: Annexes, Vol 5, Annex 156. See also Permanent Representative of Costa Rica to the Organization of American States, Amb. Hernan R. Castro, to President of the Permanent Council of the Organization of American States, James Schofield Murphy, 3 March 2000: Annexes, Vol 3, Annex 60.

[120] Costa Rican Foreign Minister Roberto Rojas López, Statement to the Permanent Council of the Organization of American States, 8 March 2000, OEA/Ser.G CP/ACTA 1224/00: Annexes, Vol 6, Annex 228.

[121] Nicaraguan Foreign Minister Eduardo Montealegre, Statement to the Permanent Council of the Organization of American States, 8 March 2000, OEA/Ser.G CP/ACTA 1224/00: Annexes, Vol 6, Annex 229.

[122] "OAS Secretary General Facilitates Reinitiating Dialogue between Costa Rica and Nicaragua", *Press Release of the Organization of American States, Washington, D.C.*, 8 March 2000: Annexes, Vol 5, Annex 158. See also "Costa Rica forced to accept the dominion of Nicaragua over the San Juan", *La Noticia*, Managua, 17 March 2000: Annexes, Vol 5, Annex 159.

[123] "Dialogue regarding River at a dead end," *La Nación*, San José, 4 April 2000: Annexes, Vol 5, Annex 161.

[124] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Eduardo Montealegre, Note No. DM- 125-2000, 10 April 2000: Annexes, Vol 3, Annex 61.

[125] Nicaraguan Foreign Minister, Eduardo Montealegre, to Costa Rican Foreign Minister, Roberto Rojas López López, Note No. MRE/DM/4366/04/00, 6 May 2000: Annexes, Vol 3, Annex 62.

[126] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Eduardo Montealegre, Note No. DM-165-2000, 22 May 2000: Annexes, Vol 3, Annex 63.

3.38. Despite unsuccessful diplomatic efforts to resolve the dispute, the President of Costa Rica continued to attempt to reach an effective solution with his Nicaraguan counterpart. The two Presidents met in private on the occasion of a multilateral meeting in Panama City on 17 June 2000,[127] when the Nicaraguan President requested a proposal.[128] In view of that request the Costa Rican President felt there was a chance finally to resolve the dispute.[129] Subsequently, in a letter dated 28 June 2000, he proposed a compromise formula which would have permitted navigation by Costa Rican police carrying their service arms, who would give prior notice to the Nicaraguan authorities.[130] The President of Nicaragua responded on 29 June 2000, stating that Nicaragua agreed to allow "...the Costa Rican police authorities to navigate that part of the river, with the acquiescence, in each case, of the Nicaraguan authorities".[131] The President of Costa Rica responded on 29 July 2000, setting out the difficulties encountered by the Costa Rican Minister of Public Security with his Nicaraguan counterpart in attempts to re-establish a *modus operandi*.[132] In his reply of 3 August 2000, the President of Nicaragua insisted that his proposed formula required the "acquiescence" of the Nicaraguan authorities on each occasion.[133]

3.39. Consequently negotiations were stalled. Costa Rica communicated with Nicaragua on each occasion when Nicaragua violated its rights of free navigation;[134] the Nicaraguan replies tended to assert its sovereignty as taking priority over Costa Rica's rights, or simply denied Costa Rica's rights altogether. In a letter of 9 May 2001, Costa Rica proposed that both countries jointly resort to international law to resolve the dispute by way of mediation.[135] On a visit to the San Juan on 10 May 2001, the President of Nicaragua rejected any such possibility. He stated: "We have nothing to do in an international organisation. Nothing, nothing."[136] Eventually, on 3 August 2001, the Nicaraguan Foreign Minister responded to Costa Rica's letter of 9 May,[137] almost three months after its receipt. In this communication, it was stated that Nicaragua would persist in charging all vessels for "the departure clearance service ("*servicio del derecho de zarpe*") that both Nicaraguan and foreign vessels in any Nicaraguan port, including those located in the said river, are charged when travelling to another State". There was no response to Costa Rica's request for mediation nor did Nicaragua suggest any other diplomatic means to resolve the dispute. On 26 September 2001, Costa Rica's Foreign Minister responded, stating once again Costa Rica's willingness to continue a diplomatic effort. He stated: "...I trust that, despite the differences, we may dialogue in greater depth in the search for adequate solutions."[138]

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[127] President of Costa Rica, Miguel Angel Rodriguez Echeverria, to the President of Nicaragua, Arnoldo Alemán Lacayo, 28 June 2000: Annexes, Vol 3, Annex 64.

[128] "Nicaragua asks for a Costa Rican proposal", *La Nación*, San José, 18 June 2000: Annexes, Vol 5, Annex 163.

[129] Another follow up meeting took place on 29 June 2000, in Mexico City. As result of the verbal exchanges between the two Presidents, it was felt that an agreement had been finally reached. However, as the correspondence of 29 June 2000 and 29 July 2000 demonstrates, no agreement was reached: see President of Nicaragua, Arnoldo Alemán Lacayo, to President of Costa Rica, Miguel Angel Rodríguez, 29 June 2000: Annexes, Vol 3, Annex 65; President of Costa Rica, Miguel Angel Rodríguez, to President of Nicaragua, Arnoldo Alemán Lacayo, 29 July 2000: Annexes, Vol 3, Annex 66.

[130] President of Costa Rica, Miguel Angel Rodríguez, to President of Nicaragua, Arnoldo Alemán Lacayo, 28 June 2000: Annexes, Vol 3, Annex 64.

[131] President of Nicaragua, Arnoldo Alemán Lacayo, to President of Costa Rica, Miguel Angel Rodríguez, 29 June 2000: Annexes, Vol 3, Annex 65.

[132] President of Costa Rica, Miguel Angel Rodríguez, to President of Nicaragua, Arnoldo Alemán Lacayo, 29 July 2000: Annexes, Vol 3, Annex 66.

[133] President of Nicaragua, Arnoldo Alemán Lacayo, to President of Costa Rica, Miguel Angel Rodríguez, 3 August 2000: Annexes, Vol 3, Annex 67.

[134] For example, Costa Rican Deputy Foreign Minister, Elayne Whyte, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DVM- 111-01, 18 April 2001: Annexes, Vol 3, Annex 70. See also Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-207-2001, 9 May 2001: Annexes, Vol 3, Annex 71.

3.40. On 23 October 2001, the Government of Nicaragua presented a reservation to its declaration of acceptance under article 36 of the Statute of the International Court of Justice, intended to avoid the jurisdiction of the Court in cases based on the interpretation of treaties or awards concluded on or before 31 December 1901.[139]

3.41. Nicaraguan elections took place in November 2001 and a new Government was inaugurated in January 2002. Costa Rica proposed that the

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[135] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-207-2001, 9 May 2001: Annexes, Vol 3, Annex 71.

[136] "Nicaragua rejects arbitration", *La Nación*, San José, 11 May 2001: Annexes, Vol 5, Annex 171. As reported by the press, on this occasion Nicaragua prohibited all Costa Rican navigation on the San Juan River for about half a day.

[137] Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. DRE/DM-JI/0818/08/01, 3 August 2001: Annexes, Vol 3, Annex 72.

[138] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM 355- 2001, 26 September 2001: Annexes, Vol 3, Annex 73.

[139] Declaration Recognizing as Compulsory the Jurisdiction of the International Court of Justice, under Article 36, Paragraph 2, of the Statue of the Court, Nicaragua Reservation, UN Reference C.N.1157.2001.Treaties-1, 5 December 2001: Annexes, Vol 6, Annex 231. This reservation was objected to by Costa Rica on 18 December 2001, UN Doc. A/56/770, 1 February 2002: Annexes, Vol 6, Annex 232.

Presidents of Costa Rica and Nicaragua meet, and they did so on 27 February 2002.[140] The outcome was a recommendation to re-initiate dialogue between the two countries. Thus the Minister of Foreign Affairs of Costa Rica proposed in a letter of 11 March 2002 that the two governments jointly request the good offices of an impartial third party, recommending the mediation of H.M. the King of Spain.[141]

3.42. In his response of 23 April 2002, the Nicaraguan Foreign Minister did not comment on Costa Rica's proposal; instead he expressed willingness to hold discussions at the Ministerial level.[142] On 2 May 2002, Costa Rican Foreign Minister Rojas announced that he had recommended that President Rodríguez file an application before the International Court of Justice, as the only possible means to resolve the dispute. In response, President Bolaños of Nicaragua requested President Rodríguez not to act on this advice but to allow the newly elected President of Costa Rica, President Pacheco, the opportunity to continue negotiations.[143]

3.43. When the new Costa Rican Government took office in May 2002, there was a sense that a new start could be made, on this and other issues.[144] On 16 June 2002, the Presidents of Costa Rica and Nicaragua met in Managua in order to discuss the possibility of a diplomatic solution to the dispute.[145] Nicaragua demonstrated a renewed disposition to hold talks but nothing more.

3.44. Given the time constraints that the Nicaraguan reservation of 23 October 2001 could place on the Court's jurisdiction and given Costa Rica's desire to negotiate without the pressure of a time limit, the Costa Rican Foreign Minister, by letter dated 5 August 2002, requested that Nicaragua withdraw the reservation.[146] Nicaragua did not answer that letter. The Costa Rican Foreign

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[140] "Bolaños sees a solution about the San Juan", *La Nación*, San José, 28 February 2002: Annexes, Vol 5, Annex 172.

[141] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Norman Caldera Cardenal, Note No. DM-030-2002, 11 March 2002: Annexes, Vol 3, Annex 74.

[142] Nicaraguan Foreign Minister, Norman Caldera Cardenal, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/DM-JI/481/04/02, 23 April 2002: Annexes, Vol 3, Annex 75.

[143] "Bolaños prefers to deal with Pacheco on the San Juan case", *La Prensa*, Managua, 3 May 2002: Annexes, Vol 5, Annex 173.

[144] An account of the improved relations can be seen in Nicaraguan Foreign Minister, Norman Caldera Cardenal, to Minister of Governance of Nicaragua, Arturo Harding, Note No. MRE/DM-JI/0680/05/2, 27 May 2002: Annexes, Vol 6, Annex 233.

[145] "Costa Rica defends dialogue", *Al Dia*, San José, 17 June 2002: Annexes, Vol 5, Annex 176.

[146] Costa Rican Foreign Minister, Roberto Tovar Faja, to Nicaraguan Foreign Minister, Norman Caldera, Note No. DM-202-2002, 5 August 2002: Annexes, Vol 3, Annex 79.

Minister continued to propose alternatives to avoid proceedings before the International Court of Justice. Eventually the Foreign Ministers signed an Agreement, witnessed by the Presidents of both countries, agreeing to "freeze" for three years the situation as to Nicaragua's acceptance of the jurisdiction of the Court. The Tovar-Caldera Agreement of 26 September 2002 was intended to permit other areas of the bilateral agenda to be advanced, regardless of the ongoing dispute relating to the San Juan.[147]

3.45. The Tovar-Caldera Agreement was an important step towards improving bilateral relations. It underlined the acknowledgment, made by the President of Nicaragua, that his country "recognizes" the International Court of Justice, and kept open recourse to the Court by suspending the entry into force of Nicaragua's new reservation, while maintaining intact the respective legal positions of the parties.[148]

3.46. After the Tovar-Caldera Agreement was concluded, both countries engaged on an ambitious bilateral and regional agenda. There were negotiations on a maritime boundary agreement between Costa Rica and Nicaragua, the signing of a free trade agreement between Central America and the United States of America and the conclusion of a Cooperation Agreement with the European Union. In addition, the Puebla–Panama Plan, an ambitious border development plan, was signed by the two Foreign Ministers in February 2005.[149] This plan would allow foreign aid to be channelled into social and environmental projects in the under-developed border region.

3.47. Subsequently the issue of Costa Rica's rights of navigation on the San Juan River was again discussed. The Foreign Ministers took up the matter, and in various meetings held in the months prior to the expiration of the Tovar-Caldera Agreement they tried to settle the dispute but were unsuccessful. In the days leading up to the expiry of the Tovar-Caldera Agreement, the Costa Rican

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[147] Tovar-Caldera Agreement, Alajuela, 26 September 2002: Annexes, Vol 2, Annex 29.

[148] "The San Juan Frozen", *La Prensa*, Managua, 27 September 2002: Annexes, Vol 5, Annex 178.

[149] Trans-border Development Plan, San Juan del Sur, Nicaragua, 17 February 2005. The main objective of this Plan is to contribute to the promotion and the creation of productive, economical, social and institutional opportunities in the border region. With a total of 28 projects, it aims to contribute to the strengthening of the Central American integration process

Ambassador to the Organization of American States met a senior adviser to the Nicaraguan Foreign Minister in order to propose alternatives for a settlement. The Costa Rican Ambassador proposed to his Nicaraguan counterpart that a peaceful settlement could be attained by recourse to mediation, arbitration or resort to a Chamber of the Court. Nicaragua rejected all these proposals.[150]

3.48. Thus it became clear that no diplomatic settlement was possible. On 29 September 2005 the Government of the Republic of Costa Rica concluded that it had no alternative than to institute the present proceedings.

3.49. In a letter to the Nicaraguan Foreign Minister, dated 28 September 2005, the Costa Rican Foreign Minister summarised the position in the following terms:

> "With the actions resulting from the Agreement that we signed on 26 September, 2002, we have demonstrated through the mechanisms of dialogue and cooperation how much can be achieved in benefit of our countries, both in the bilateral sphere as well as in the process of the Central American integration. At that time we agreed to promote the Central American Free Trade Treaty with the United States of America, the Central American Agreement of Association with the European Union, the Puebla-Panama Plan and a Programme of border development to strengthen the economic and social conditions of the inhabitants of an area that should always be one of cooperation and never one of confrontation. Today, as a result of an atmosphere of respect, fraternity and mutual trust, we have made those aspirations a reality of opportunities, that we must continue increasing. Notwithstanding, despite all the achievements attained, it is also true that, as the abovementioned Agreement expires, the only source of discord between our nations still remains. The views our countries hold in relation to Costa Ricas' rights of navigation on the San Juan River have still not been able to be resolved by mutual understanding. Costa Rica acknowledges that the ownership and sovereignty of the San Juan River belong to Nicaragua. But Costa Rica has the right that her navigation on the San Juan River be fully respected, in accordance to what is established in the pertinent legal instruments. Costa Rica does not seek more rights, or less rights, than those granted by said instruments. Why not do away, once and for all, with the only source of discord between Costa Rica and Nicaragua? If our views diverge and have not been able to be reconciled bilaterally, nor by mechanisms of either mediation or arbitration, how can we not accept that at least one of the parties present the matter before the highest international judicial instance in order to overcome, once and for all, our only cause of disagreement? Therefore, I am fulfilling my duty to inform you, and through you to the people of Nicaragua, that Costa Rica has decided to present the case before the International Court of Justice in order that

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[150] Affidavit of Javier Sancho Bonilla, 8 February 2006: Annexes, Vol 4, Annex 97.

it may analyze the points of view of our countries and establish the validity of each one of them. To have recourse to the International Court of Justice could never represent a rupture in the friendship between two nations. Both Costa Rica and Nicaragua have accepted the Court as a means of assuring the peaceful coexistence and mutual respect between nations. The resolution of the differences should never be left to irrationality, but to the means of peaceful solution of controversies offered by international law. For this reason, Costa Rica cannot accept any threat as a reprisal for exercising this legitimate right. We approach the International Court of Justice with the sincere intention that it's eventual decision will contribute to there never again be a motive for disagreement between Costa Rica and Nicaragua. I sincerely hope that, by this means, we may leave behind, for future generations, fraternal and friendly relations between our countries without any causes that may affect them. This is our historic responsibility."[151]

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[151] Costa Rican Foreign Minister, Roberto Tovar Faja, to Nicaraguan Foreign Minister, Norman Caldera Cardenal, Note No. DM- 462-05, 28 September 2005: Annexes, Vol 3, Annex 80.

Chapter 4

Costa Rica's Navigational and Related Rights

A. Introduction

4.01. The purpose of this Chapter is to present the navigational and related rights of Costa Rica on the San Juan as they result from international law, particularly the Treaty of Limits of 1858 (especially articles IV and VI), the Cleveland Award of 1888, the judgment of the Central American Court of Justice of 13 September 1916 and the 1956 Agreement pursuant to Article IV of the Pact of Amity.[152] The following explanation of these navigational and related rights only concerns rights which are at stake in the present proceedings. It does not address other rights of Costa Rica under treaties in force or any other rules of international law.

4.02. There is no dispute between the parties as to the geographical scope of the rights of navigation recognized to Costa Rica by the Treaty of Limits. This is determined in article VI of the Treaty of Limits as being between the mouth of the river in the Atlantic Ocean and the point located three English miles distant from Castillo Viejo (see **Sketch Map 2** opposite page 9 above). As to this stretch of the San Juan, the rights of navigation of Costa Rica and Nicaragua are described by article VI as "common".

4.03. It is apparently not disputed, either, that the exercise of Costa Rica's rights requires no prior authorization from Nicaragua. What Nicaragua challenges is the scope of those rights, arguing that most of the navigational uses relied on by Costa Rica are not covered by the Treaty of Limits and the Cleveland Award and that these are therefore—according to Nicaragua—subject to its unilateral decision and regulation.[153]

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[152] Costa Rica-Nicaragua, Agreement pursuant to Article IV of the Pact of Amity (Fournier-Sevilla), Washington, D.C., 9 January 1956: Annexes, Vol 2, Annex 24.

[153] In his statement before the Permanent Council of the Organization of American States of 8 March 2000, Nicaraguan Minister of Foreign Affairs Eduardo Montealegre declared: "Any navigation undertaken by Costa Rica in the waters of the San Juan River that does not correspond to the navigation expressly contemplated in the Jerez-Cañas Treaty and the Cleveland Award in force in the part of the river established in the international instruments currently in effect should be expressly authorized by Nicaragua, as the country possessing full sovereignty over the waters of the said river and, as such, able to establish all manner of regulations that, by virtue of the said sovereignty, it deems necessary to establish" (Translation by Costa Rica) OEA/Ser.G CP/ACTA 1224/00, 23 Annexes, Vol 6, Annex 229. See also Acting Nicaraguan Foreign Minister, Carlos Gurdián, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/98/02638, 28 August 1998: Annexes, Vol 3, Annex 51.

4.04. Article VI of the Treaty of Limits provides that Costa Rica holds perpetual rights of free navigation on the San Juan. While granting free navigation to Costa Rica, article VI makes no distinction between official and private vessels. Neither are Costa Rica's rights limited to "Costa Rican citizens" or "Costa Rican private boats". Article VI plainly confers rights on Costa Rica as a State. These rights apply without distinction to any vessel sailing to or from Costa Rica, and to passengers and goods on board any such vessel.

4.05. The present chapter proceeds in seven sections:

Section B analyses the general scope of the right of navigation, in particular its "perpetual" and "free" character. It shows that this right cannot be limited, restricted, conditioned or interfered with.

Section C addresses the meaning of the rights of navigation "for the purposes of commerce" ("*con objetos de comercio*"), as set out in article VI of the Treaty of Limits, and demonstrates that this phrase includes freedom of navigation for communication and tourism as well as trade activities such as transport of goods.

Section D turns to the right of Costa Rica to navigate on the lower part of the River where navigation is common, in order to protect commerce and for reasons of revenue control, as set out in the Cleveland Award and the 1916 Judgment of the Central American Court of Justice.

Section E refers to Costa Rica's rights and obligations to safeguard the San Juan and to contribute to its defence, as well as the common bay of San Juan del Norte, and their implications for navigation, in accordance with article IV of the Cañas-Jerez Treaty, the 1916 Judgment and the 1956 Agreement.

Section F explains the right of navigation for re-supply of personnel and relief of border posts on the Costa Rican bank of the River, which is a corollary of the foregoing rights and was acknowledged by the Cuadra-Lizano Joint Communiqué of 30 July 1998.

Section G is devoted to other related rights of Costa Rica with regard to the San Juan. It includes (1) the right of Costa Rican vessels to land at any part of the bank where navigation is common, as established by article VI of the Cañas-Jerez Treaty; (2) the right of Costa Rica to see Nicaragua making its best efforts and collaborating with Costa Rica in order to facilitate traffic on the San Juan; and (3) the customary rights of fishing by residents of the Costa Rican bank of the River.

B. A perpetual right of free navigation

4.06. The first sentence of article VI of the Treaty of Limits shows the close link between the legal situations of the contracting Parties with regard to the San Juan:

> "The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo."

There is an evident interrelation between Nicaragua's sovereignty over the waters of the San Juan and Costa Rica's perpetual rights to free navigation. Article VI makes Nicaragua's dominion and sovereign jurisdiction over the River conditional upon the Costa Rican perpetual rights of free navigation.

4.07. The adjective "perpetual" refers to the temporal dimension of this right. It entails a permanent, continuous, uninterrupted and enduring right. Costa Rica is entitled permanently to enjoy its right to free navigation. Evidently, no temporal limitation to this right is permitted.

4.08. Article VI furthermore establishes the extent and the content of the right: it is one of *free* navigation. The adjective "free" implies that navigation, i.e. movement of persons or goods along the River, shall be unqualified and unconditional. The concept of "free" both at the time of the conclusion of the Treaty of Limits in 1858 and today remains virtually the same. In contemporary dictionaries, "free" was defined as:

"1. Being at liberty; not being under necessity or restraint, physical or moral... 5. Unconstrained; unrestrained; not under compulsion or control ... 8. Not obstructed; as, the water has a *free* passage or channel ... 15. Not encumbered with; as *free* from a burden... 16. Open to all, without restriction or without expense ... 18. Possessing without vassalage or slavish conditions."[154]

According to Dr Johnson's dictionary: "1. At liberty; not a vassal; not enslaved; not a prisoner; not dependent… 2. Uncompelled; unrestrained."[155] The word is similarly defined in modern dictionaries. The first meaning of the word "free" provided by the *Oxford Dictionary of English* is the following: "able to act or be done as one wishes; not under the control of another". Other meanings include: "not subject to engagements or obligations", "given or available without charge".[156]

4.09. It follows that any limitation imposed upon navigation that by right is "free" constitutes a denial of that right. Unlike other 19th century treaties dealing with rights of fluvial navigation, the 1858 Treaty in no way subordinates the right of navigation of the riparian State: in particular, it contains no language relating to national treatment, domestic regulations or other such conditions. The Act for the Navigation of the Danube signed at Vienna on 7 November 1857 may be cited by way of contrast. Article I provides as follows:

"La navigation du Danube, depuis l'endroit où ce fleuve devient navigable jusque dans la mer Noire, et depuis la mer Noire jusqu'au dit endroit, sera entièrement libre sous le rapport du commerce, tant pour le transport des marchandises que pour celui des voyageurs; en se conformant toutefois aux dispositions du présent Acte de navigation ainsi qu'aux règlements de police fluviale."[157]

4.10. In particular, the right of free navigation includes the right for Costa Rican vessels to carry their own flag. This was clearly recognized by Nicaragua when it claimed that American vessels navigating the San Juan could not use the American flag. This can be seen from the letter addressed to Secretary of State Seward of the United States of America by the Nicaraguan Minister in Washington, D.C., Luis Molina, on 7 October 1868:

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[154] *Webster's Dictionary of the English Language* (London: CA Goodrich, 1848), 480 col 1 (emphasis in original).

[155] Samuel Johnson's *Dictionary of the English Language* (London: HJ Todd, London, 1827).

[156] *The Oxford Dictionary of English* (2nd ed., Oxford: Oxford University Press, 2003), 687-8.

[157] 117 CTS 474 (emphasis added). Bilateral treaties also contain similar provisions. To mention but one example: article VI of the Treaty between Brazil and Uruguay modifying their frontiers on Lake Merim and the River Yaguaron of 30 October 1909, 209 CTS 429, provides that "Brazilian and Uruguayan vessels remain… subject, in the jurisdictional waters of each of the two republics, to the fiscal and police regulations which they have established or may hereafter establish."

> "On the other hand I can assure Your Excellency that the present administration of Nicaragua does not feel disposed to consent that any other flag, except her own and the one of Costa Rica, as bordering state, should float in the navigation of her interior waters; that it considered as unauthorized the use of the United States flag made by the Central American Transit Company."[158]

4.11. Article VI of the Treaty of Limits also creates a fiscal freedom: "no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments." This clearly means that a distinct and express agreement between the parties would be required in order to levy any charge or duty.

4.12. The Cleveland Award also addressed certain economic aspects of free navigation. Answering points raised by Nicaragua, and on the basis of the interpretation of the 1858 Treaty, the Cleveland Award states in the third point of the *dispositif* that:

> "4. The Republic of Costa Rica is not bound to concur with the Republic of Nicaragua in the expenses necessary to prevent the bay of San Juan del Norte from being obstructed; to keep the navigation of the River or Port free and unembarrassed, or to improve it for the common benefit.
> 5. The Republic of Costa Rica is not bound to contribute any proportion of the expenses that may be incurred by the Republic of Nicaragua for any of the purposes above mentioned."[159]

4.13. As to what constitutes "freedom of navigation", reference may be made to the decision of the Permanent Court of International Justice concerning that term in the Convention of Saint-German en Laye. The Court explained:

> "According to the conception universally accepted, the freedom of navigation referred to by the Convention comprises freedom of movement for vessels, freedom to enter ports, and to make use of plant and docks, to load and unload goods and to transport goods and passengers.

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[158] Perez Zeledón, *Argument*, 100: Annexes, Vol 6, Annex 207.

[159] Cleveland Award, 22 March 1888, Third point: Annexes, Vol 2, Annex 16.

From this point of view, freedom of navigation implies, as far as the business side of maritime or fluvial transport is concerned, freedom of commerce also. But it does not follow that in all other respects freedom of navigation entails and presupposes freedom of commerce.

What the Government of the United Kingdom is concerned with in this case is the principle of freedom of navigation regarded from the special aspect of the commercial operations inherent in the conduct of the transport business; for that Government has never contended that the impugned measures constituted an obstacle to the movement of vessels.

For this reason the Court—whilst recognizing that freedom of navigation and freedom of commerce are, in principle, separate conceptions—considers that it is not necessary, for the purposes of the present case, to examine them separately."[160]

4.14. The International Law Association's Helsinki Rules of the Uses of the Waters of International Rivers provides for its part the following definition of "free navigation":

"'Free navigation', as the term is used in this Chapter, includes the following freedom for vessels of a riparian State on a basis of equality:

(a) freedom of movement on the entire navigable course of the river or lake;

(b) freedom to enter ports and to make use of plants and docks; and

(c) freedom to transport goods and passengers, either directly or through transshipment, between the territory of one riparian State and the territory of another riparian State and between the territory of a riparian State and the open sea."[161]

4.15. Clearly, a broad interpretation has been adopted. As Charles Rousseau rightly summarized:

"En d'autres termes la liberté de la navigation comprend par définition, à côté de la liberté de circulation sur la voie d'eau, l'activité économique qui en est le corollaire (embarquement, débarquement, transbordement, mise en magasin, voire conclusion de contrats relatifs à ces diverses opérations)."[162]

4.16. Hence, the perpetual right of free navigation includes the unrestricted and permanent right of movement of Costa Rican vessels whether engaged in the transport of goods or passengers or both, on the routes and to the places established by the 1858 Treaty of Limits, i.e. "either with Nicaragua or with the interior of Costa Rica, through the San Carlos River, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan River, which is hereby declared to belong to Costa Rica."[163] Costa Rica's perpetual right of free navigation is a right to navigate freely, without impediments, conditions, restrictions or charges and duties of any kind. Any interference, whether in the form of regulations, impediments, charges, restrictions or any condition that might be imposed, is a violation of this right.

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[160] *Oscar Chinn*, Judgment, PCIJ, Series A/B, No 63 (1934), 83.

[161] Article XIV, International Law Association, *Report of the Fifty-Second Conference* (Helsinki, 1966), 507.

[162] Charles Rousseau, *Droit international public*, tome IV, Les relations internationales (Paris: Sirey, 1980), 495.

C. The meaning of "*objetos de comercio*"

4.17. In the *Oscar Chinn* case, the Permanent Court also established the link between freedom of navigation and freedom of commerce, a link evidenced by the existence of an impressive numbers of treaties of "commerce and navigation". Nicaragua itself has invoked one such treaty before this Court, arguing (successfully) for a broad interpretation.[164]

4.18. After stipulating the perpetual right of free navigation, article VI of the Treaty of Limits specifies "said navigation being for the purposes of commerce". In the original Spanish the term is "*con objetos de comercio*". Thus article VI reads as follows:

> "The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from CastilloViejo, *said navigation being for the purposes of commerce* either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river, which is hereby declared to belong to Costa Rica. The vessels of both countries shall have the power to land indiscriminately on either side of the river at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments." (Emphasis added.)

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[163] Treaty of Limits, article VI: Annexes, Vol 2, Annex 7(b).

[164] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits*, I.C.J. Reports 1986, p. 14 at 135 (para 270).

4.19. It will be noted that the term "purposes of commerce" is annexed to the geographical description, i.e. to the places to which those purposes could be oriented: whether to Nicaragua or to the interior of Costa Rica, through the above-mentioned rivers or from any part of the Costa Rican bank of the San Juan. This formulation does not require that the commerce be linked with any particular destination. Article VI specifies that navigation can be carried out if its destination is Nicaragua, or the interior of Costa Rica, even if the navigation continues to other rivers, and no matter where the navigation from the Costa Rican bank proceeds. In short, Costa Rican navigational rights on the relevant part of the San Juan include *cabotage* or coastal navigation between two Costa Rican points, or navigation between one Costa Rican and one Nicaraguan point, or navigation between two points of the Nicaraguan bank where navigation is common, as well as transit to and from the sea.

(1) "*Objetos*"

4.20. Since 1994,[165] and contrary to its previous position,[166] Nicaragua has challenged the scope of the expression "*con objetos de comercio*" ("for the purposes of commerce"). Nicaragua now contends that this expression must be understood as referring exclusively to *transportation of commercial goods*, so that transportation of persons is excluded. Thus in March 2000, the Nicaraguan Foreign Minister, Mr Eduardo Montealegre, advanced this position before the Permanent Council of the Organization of American States, in the following terms:

> "This means that Nicaragua exercises, without any discussion, full sovereignty, control and jurisdiction over the entire course of the San Juan River and that Costa Rica's rights, which Nicaragua has always respected, are limited to free navigation along a stretch of the river, and only for transporting *objetos de comercio*. This specific provision of the Treaty excludes tourism and other activities."[167]

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[165] Nicaraguan Foreign Minister, Ernesto Leal, to Costa Rican Foreign Minister, Bernd Niehaus Quesada, Note No. 940284, 21 March 1994: Annexes, Vol 3, Annex 48.

[166] See Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar R. Téllez, to Costa Rican Foreign Minister, Fernando Volio Jiménez, Note No. E.N. 789/82, 2 August 1982: Annexes, Vol 3, Annex 44.

[167] Translation by Costa Rica (emphasis added). Original text: "Esto quiere decir que Nicaragua ejerce, sin discusión alguna, plena soberania, control y jurisdicción sobre el rio San Juan en toda su extensión, y los derechos de Costa Rica, que Nicaragua siempre ha respetado, se limitan a la libre navegación en un trecho del rio y únicamente para el transporte de objetos de comercio. Esta disposición expresa del Tratado excluye el turismo y otras actividades.": Annexes, Vol 6, Annex 229.

4.21. Nicaragua's new interpretation of this passage in article VI of the Treaty of Limits is contrary to the ordinary meaning of the expression "*objetos de comercio*" in its context and in light of its object and purpose. It is contrary to the *travaux préparatoires* as well as the practice of the Parties with regard to navigation on the River. It is contrary to the position previously adopted by Nicaragua itself.

4.22. The wording "*objetos de comercio*" clearly includes navigation with any commercial goal. The English version submitted by both Parties to President Cleveland was "for the purposes of commerce".[168] "Purposes of commerce" was the wording employed in the Cleveland Award itself. It was also the meaning employed in the English translation of the 1916 judgment of the Central American Court of Justice as published in the *American Journal of International Law*.[169]

4.23. The contemporary translation of the Treaty of Limits published in the *British and Foreign State Papers* gives the relevant phrase in article VI as "for commercial purposes".[170] This leads to the same result as there is no relevant difference between "purposes of commerce" and "commercial purposes". So too does the 1898 version published by John Bassett Moore.[171] All these translations confirm that "navigation" was intended to include commerce in general, and was not limited to transportation of trade goods.

4.24. The same point was expressed by EP Alexander, the arbitrator appointed by the parties to decide upon conflicts on the demarcation of the boundary established by the Treaty of Limits. He commented in his first award of 30 September 1897: "throughout the treaty, the [San Juan] river is treated and regarded as an outlet of commerce."[172]

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[168] See Annexes, Vol 2, Annex 7(b) and Annex 7(c).

[169] Annexes, Vol 2, Annex 21.

[170] 48 BFSP 1049: see Annexes, Vol 2, Annex 7(d).

[171] JB Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party* (Washington, D.C.: Government Printing Office, 1898), Vol V, 4706.

[172] Award No. 1, 30 September 1897, *Pasicrisie Internationale 1794-1900* (1902, reprinted Nijhoff, The Hague, 1997), 528, 531: Annexes, Vol 2, Annex 18.

4.25. According to the *Dictionary of the Spanish Language of the Spanish Academy*, the authoritative reference dictionary in the Spanish speaking world, in the edition contemporary to the conclusion of the Treaty of Limits, the term "*objeto*" means:

> "What is perceived with one of the senses, or in regard to which they are exercised. *Objectum*. // It is also called the term or end of the acts of the potencies. *Objectum*. // The purpose or intent to which a thing is directed or pointed at. *Finis, scopus, objetum*. // The matter and the subject of a science; as the object of the theology, which is God. Among the facultatives it is divided in material and formal. The material is referred to the same subject or matter of the faculty, and the formal to its end; as in medicine the material OBJECT is the illness and the formal is the sanity. *Objectum, Vel materiale vel formale facullatis*. //obs. Objection or fault, doubt.//obs. Fault and exception.//Of attribution. Refers to the main or ultimate end to which all acts of the faculty or of the potency are directed, and by extension it is said of other things that are mainly attempted. Attributionis objectum."[173]

4.26. None of these definitions of the term "*objetos*" corresponds to "*cosa*" (thing), nor was the latter the meaning given by the Parties in the Treaty, which is Nicaragua's current interpretation.

4.27 One of the clearest indications that the use of the word "*objetos*" was intended to mean "purposes" is provided by the 1858 Treaty itself. Article VI is not the only place where the Treaty uses the word "*objetos*". Article VIII reads as follows:

> "Si los contratos de canalización o de tránsito celebrados antes de tener el Gobierno de Nicaragua, conocimiento de este convenio, llegasen a quedar insubsistentes por cualquier causa, Nicaragua se compromete a no concluir otro *sobre los expresados objetos*, sin oír antes la opinión del Gobierno de Costa Rica acerca de los inconvenientes que el negocio pueda tener para los dos países; con tal que esta opinión se emita dentro de treinta días después de recibida la consulta; caso que el de Nicaragua manifieste ser urgente la resolución; y no dañándose en el negocio los derechos naturales de Costa Rica, este voto será consultivo."[174]

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[173] La Academia Española, *Diccionario de la lengua castellana por la Academia Española* (10th edn, Madrid: Imprenta Nacional, 1852), 482. Original in Spanish: "Lo que se percibe con alguno de los sentidos, ó acerca de lo cual se ejercen. Objectum. // Se llama también el término ó fin de los actos de las potencias. Objectum. // El fin ó intento á que se dirige ó encamina alguna cosa. Finis, scopus, objectum. // La materia y el sujeto de una ciencia; como el OBJETO de la teología, que es Dios. Entre los facultativos se divide en material y formal. El material llaman al mismo sujeto ó material de la facultad, y el formal el fin de ella; como en la medicina el OBJETO material es la enfermedad, y el formal la sanidad. Objectum, vel materiale vel formale facultatis. // ant. Objeción ó tacha, reparo. // ant, Tacha y excepción. // DE ATRIBUCIÓN. Llaman al principal ó ultimo fin al cual se dirigen todos los actos de la facultad ó de la potencia, y por extension se dice de otras cosas que principalmente se intentan. Attributionis objectum."

[174] Annexes, Vol 2, Annex 7(a) (emphasis added).

Clearly, "*objetos*" was used in both articles to mean *purposes*.

4.28 The translation of the Treaty of Limits presented by Costa Rica to Cleveland, which was not contested by Nicaragua, confirms this. Article VIII is translated in the following way:

> "If the contracts of canalization or transit entered into by the Government of Nicaragua previous to its being informed of the conclusion of this treaty should happen to be invalidated for any reason whatever, Nicaragua binds herself not to enter into any other arrangement *for the aforesaid purposes* without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of 30 days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory."[175]

When speaking of the "*expresados objetos*" (aforesaid purposes), the article refers to the contracts of canalization or transit that Nicaragua may have entered into.

4.29. Thus each text—the original in Spanish and the translation presented to President Cleveland—demonstrates that the word "*objetos*" was employed to mean "purposes" in both instances in which the Treaty employed that term, i.e. in articles VI and VIII.

4.30. Nicaragua's questions to Arbitrator Cleveland in relation to points which it thought were doubtful and required interpretation show that it also treated the phrase "*objetos de comercio*" as referring to "purposes of commerce". In a document sent to President Cleveland on 22 June 1887, Nicaragua stated:

> "4. Nicaragua consented, by Article IV, that the Bay of San Juan, which always exclusively belonged to her and over which she exercised exclusive jurisdiction, should be common to both Republics; and by Article VI she consented, also, that Costa Rica should have, in the waters of the river, from its mouth on the Atlantic up to three English miles before reaching Castillo Viejo, the perpetual right of free navigation *for purposes of commerce*. Is Costa Rica bound to concur with Nicaragua in the expense necessary to prevent the Bay from being obstructed, to keep the navigation of the river and port free and unembarrassed, and to improve it for the common benefit?"[176]

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[175] Annexes, Vol 2, Annex 7(b) (emphasis added).

[176] Letter from Fernando Guzman to Costa Rican Foreign Minister, "Points Which, According to the Government of Nicaragua, are Doubtful and Require Interpretation, 22 June 1887, reproduced in Pérez Zeledón, *Argument*, 9-11 at 9-10: Annexes, Vol 3, Annex 36 (emphasis added).

4.31. Similarly the fourth of Nicaragua's questions to the arbitrator read as follows:

> "If Costa Rica, who, according to Article VI of the treaty, has only the right of free navigation *for the purposes of commerce* in the waters of the San Juan river, can also navigate with men-of-war or revenue cutters in the same waters?"[177]

4.32. Thus in arguing that Costa Rica did not have the right to navigate with war vessels, Nicaragua insisted twice that article VI refers to "the purposes of commerce" or to "commercial purposes".[178]

4.33. At that time Nicaragua raised before the arbitrator all the issues it had as to the correct interpretation of the Treaty of Limits–and there were several. But in referring to Costa Rica's right of free navigation in the San Juan, Nicaragua had no doubt that the phrase was properly rendered as "purposes of commerce". It furthermore stated that Costa Rica's commerce in the River could not be interfered with. Clearly, Nicaragua did not envisage the possibility that "*objetos de comercio*" should be limited to the transport of "commercial items".

4.34. In subsequent statements Nicaragua also consistently acknowledged that "*objetos de comercio*" represents "*con fines de comercio*", an expression indisputably meaning "for the purposes of commerce" and which cannot be understood as limited to carriage of commercial goods. Official statements made by Nicaragua in 1897, 1954 and 1974 provide examples.

4.35. Thus the Secretariat of the Diet of the Mayor Republic of Central America (of which Nicaragua formed part at that time), protesting against a decree adopted by the Constitutional Congress of Costa Rica which allegedly allowed vessels of all nations to navigate the San Juan with the purpose of importing goods to Costa Rica, stated:

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[177] Ibid (emphasis added).

[178] Cf also the following passage: "Article VI of the Treaty provides that Costa Rica shall have perpetual rights of free navigation upon the San Juan River from its mouth to three English miles below Castillo Viejo *for the purposes of commerce*... The navigation of a river *for commercial purposes* does not draw with it the menace that the appearance on its waters of vessels of war must necessarily imply. What need has Costa Rica of war vessels in the light of Article IX of the treaty? Even if war was flagrant, *her commerce on this river* could not be interfered with. This article simply transformed to a perfect right what the law of nations denominates an imperfect right- a right of outlet to the sea, an a right of trade, by means of this natural highway, with foreign nations." Second and third emphasis added: *Reply of the Republic of Nicaragua to the Case of the Republic of Costa Rica*, 48: Annexes, Vol 6, Annex 208.

> "When the State of Nicaragua became aware of it, it caused the overall impression that the abovementioned decree threatens the sovereignty of the Nation that has the exclusive dominion and sovereign jurisdiction over the waters of the San Juan River, and Costa Rica only has the right to free navigation for *purposes of commerce* [*para fines de comercio*] from the mouth in the Atlantic up to three English miles before reaching Castillo Viejo; ..."[179]

4.36. In an official publication of the Ministry of Foreign Affairs of Nicaragua of 1954 under the signature of the Minister of Foreign Affairs, Oscar Sevilla Sacasa, it was mentioned that, following certain border incidents, "some confusion as to the true legal situation of the San Juan river" was observed in the Costa Rican and foreign press. The Report continued:

> "[w]ith the aim of clarifying this confusion the Nicaraguan Ministry of Foreign Affairs sees fit to present the public with the compilation of the following documents, which establish Nicaragua's and Costa Rica's rights in the San Juan River."[180]

After mentioning the Treaty of Limits, the Cleveland Award, the Matus-Pacheco Convention, the Alexander Awards and a sketch-map showing the boundary as demarcated, the Nicaraguan Ministry of Foreign Affairs concluded:

> "To sum up the matter, and in accordance with the documents we are presenting to the public, Nicaragua has the dominion and supreme jurisdiction over the whole San Juan River, and Costa Rica only has the right of navigation, exclusively, for commercial and fiscal purposes [*con fines de comercio y fiscales*], at the part of the river between the mouth of the Atlantic up to within three English miles of Castillo Viejo."[181]

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[179] Letter of the Secretary to the Diet of the Mayor Republic of Central America to the Minister of Foreign Affairs of Costa Rica, 27 July 1897 (emphasis added): Annexes, Vol 3, Annex 37. Translation by Costa Rica, the original text in Spanish reads: "Al tenerse conocimiento de él en el Estado de Nicaragua, causó generalmente la impresión de que el indicado decreto es atentatorio á la soberanía de la Nación, que exclusivamente tiene el dominio y sumo imperio de las aguas del río San Juan, y Costa Rica únicamente el derecho de libre navegación para fines de comercio desde su desembocadura en el Atlántico hasta tres millas ingiesas antes de llegar al *Castillo Viejo*..."

[180] Translation by Costa Rica. Original Spanish: "A fin de aclarar esa confusión el Ministerio de Relaciones Exteriores de Nicaragua ha creído del caso presentar al público la compilación de los siguientes documentos, que determinan los derechos de Nicaragua y Costa Rica en el río San Juan." *Situación jurídica del Río San Juan* (Ministerio de Relaciones Exteriores, Managua, 1954), 6: Annexes, Vol 6, Annex 219.

[181] Ibid, translation by Costa Rica. Original Spanish: "Resumiendo la cuestión, y de conformidad con los documentos que presentamos al público, Nicaragua tiene el dominio y sumo imperio sobre todo el río San Juan, y Costa Rica, solo tiene derecho de navegación, exclusivamente con fines de comercio y fiscales, en la parte del río comprendida entre la desembocadura en el Atlántico y punto situado tres millas inglesas antes de llegar al Castillo Viejo."

The phrase "*con fines de comercio y fiscales*" clearly refers to commercial and fiscal "purposes". "*Fines*" in Spanish means "purposes", "ends" or "goals". According to the Nicaraguan position, "*fines de comercio*" is equivalent to "*objetos de comercio*".

4.37. This statement was repeated verbatim in a later edition of the same official publication twenty years later, showing the continued acknowledgement by Nicaragua of Costa Rica's rights of navigation for "commercial and fiscal purposes".[182]

4.38 If the purpose of the Treaty was to limit Costa Rican navigation to the transportation of commercial "objects", the normal words employed would have been "*mercaderías*", "*bienes*" (merchandise, goods), or the expression "*artículos de comercio*". Indeed a number of treaties contemporary to the Treaty of Limits which dealt with commercial navigation explicitly refer to both transport of persons and "goods". Nothing in the Treaty of Limits permits the phrase "*con objetos de comercio*" to be interpreted in the narrow way Nicaragua now does.

4.39. As noted in Chapter 2, the Treaty of Limits was preceded by an earlier treaty (the 1857 Cañas-Juarez Treaty) which never entered into force. Instead negotiations were resumed, leading to the conclusion of the Cañas-Jerez Treaty. It is worth noting, however, the fundamental change of the wording of the relevant provision. Article 5 of the unratified 1857 Treaty read:

> "La República de Costa Rica lo mismo que la de Nicaragua, usarán libremente de las aguas del Río San Juan para la navegación y transporte de *artículos de comercio de importación y exportación*, respetando las leyes de aduana, y satisfaciendo los derechos fiscales de cada una de dichas Repúblicas tiene impuestos o imponga en lo sucesivo sobre los artículos que se introduzcan por sus respectivas aduanas." (Emphasis added)

> "The Republic of Costa Rica, as well as the one of Nicaragua, will have free use of the waters of the San Juan River, for navigation and transportation of articles of trade of import and export, observing customs legislation, and complying with the fiscal duties of each Republic, as well as those that will be taxed over the articles that will be brought in through their respective customs."[183]

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[182] *Situación jurídica del Río San Juan* (Ministerio de Relaciones Exteriores, Managua, 1974), 6: Annexes, Vol 6, Annex 222.

[183] Translation by Costa Rica: Annexes, Vol 2, Annex 5 (emphasis added).

Thus article 5 referred to navigation and transport of articles of trade for import and export (*"articulos de comercio de importación y exportación"*). The Treaty of Limits of 1858 discarded this terminology for a much broader one. It did not confine the right of navigation to the transportation of trade articles; it included commerce in its broadest sense, including the transport of persons.

4.40. Subsequent treaty practice between the parties shows that when they intended to refer to "commercial goods", they normally used the words "*artículos*" "*mercaderías*" or "*efectos*", not "*objetos de comercio*". This is the case of the Treaty of Commerce (Volio-Zelaya) concluded on 14 August 1868, in which the parties agreed on freedom of trade for citizens of both countries with regard to non-prohibited goods ("*articulos*", "*efectos*").[184] Other treaties between Costa Rica and Nicaragua employ the term "*objeto(s)*" to mean "purposes" unless the context clearly indicates otherwise.[185]

4.41. In conclusion, the expression in article VI of the Treaty of Limits—"*con objetos de comercio*"—entitles Costa Rica to the most ample faculty of commerce in the San Juan, a right that is free and perpetual. It entitles Costa Rica to a real right of use, making it possible for all vessels (except for vessels of war) sailing to or from Costa Rica to transit freely, either for communication, trade or simple transit between any points within Costa Rican territory, or to or from points abroad, or on either bank of the River where Costa Rica has a right of free navigation.

(2) *"Comercio"*

4.42. The purposes specified in article VI of the Treaty of Limits are those of "commerce". The term "commerce" is preceded by the plural "purposes" ("*objetos*"). It necessarily means that there may be more than one purpose of commerce. Indeed, this interpretation is in conformity with the broad scope of the word "commerce", in particular during the 19th century.

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[184] See articles 1 and 2: Annexes, Vol 2, Annex 10. See also the unratified Additional Convention of 21 December 1868 (Esquivel-Rivas): Annexes, Vol 2, Annex 12. Art 2 refers to "las tarifas sobre fletes de productos ó mercaderías de importación ó exportación" ("the tariffs for the shipping of import or export products or merchandizes"): translation by Costa Rica.

[185] See e.g. Preliminary Convention on a scientific survey, San José, 13 July 1868, art 1: Annexes, Vol 2, Annex 9.

4.43 The expression "*con objetos de comercio*" is similar to the French "*sous le rapport du commerce*", first employed at the Congress of Vienna in relation to freedom of navigation. The provisions adopted at the Congress of Vienna constituted the basis for the development of the modern law of international watercourses and served as a model for most of the treaties regulating fluvial navigation during the 19th century.[186]

4.44. The expression "*sous le rapport du commerce*" was proposed by the Prussian representative Wilhem von Humboldt, apparently with the intention of denying freedom of navigation to non-riparian States. But this was not the interpretation followed by other States, in particular France and Great Britain.[187] When a Treaty concerning navigation of the Danube was concluded on 7 November 1857, the same discussion arose with regard to the term "*sous le rapport du commerce*", which was also incorporated in this Treaty.[188] The British Government explicitly declared that this formula was equivalent to "*tant pour le transport des marchandises que pour celui des voyageurs*".[189] Thus the most important previous treaties related to fluvial navigation that were available to the negotiators of the Treaty of Limits confirm Costa Rica's position.

4.45. The expression "*sous le rapport du commerce*" was also used, *inter alia*, by the *Institut de droit international* in its "*Projet de règlement international de navigation fluviale*" adopted at the Heidelberg session in 1887. The first paragraph of article 3 reads as follows:

> "La navigation dans tout le parcours des fleuves internationaux, du point où chacun d'eux devient navigable jusque dans la mer, est entièrement libre et ne peut, sous le rapport du commerce, être interdite à aucun pavillon."[190]

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[186] Article 2 of the *Règlement pour la libre navigation des rivières*, Vienna, 24 March 1815, 64 CTS 13, Martens, 2 *NRG* 434 reads as follows: "La navigation dans tout le cours des rivières indiquées dans l'article précédent, du point où chacune d'elles devient navigable jusqu'à son embouchure, sera entièrement libre, et ne pourra, *sous le rapport du commerce*, être interdite à personne; bien entendu que l'on se conformera aux règlements relatifs à la police de cette navigation, lesquels seront conçus d'une manière uniforme pour tous, et aussi favorable que possible au commerce de toutes les nations" (emphasis added).

[187] See Engelhardt (ed), *Du régime conventionnel des fleuves internationaux. Etudes et projet de règlement général précédés d'une introduction historique* (Paris: Cotillon, 1879), 31-3.

[188] Act for the Navigation of the Danube, Vienna, 7 November 1857, 117 CTS 471. Art I provided that navigation of the Danube would be "entièrement libre sous le rapport de commerce, tant pour le transport des marchandises que pour celui des voyageurs".

[189] Engelhardt, 85-6.

[190] Institut de Droit international, *Tableau général des Résolutions (1873-1956)* (Basel: Verlag für Recht und Gesellschaft, 1957), 71.

Evidently, in the view of the members of the *Institut*, freedom of navigation could not be prohibited to any flag when carried out *in relation to commerce*.

4.46. The same broad approach has been taken by the Court in interpreting treaty provisions guaranteeing freedom of commerce. In *Military and Paramilitary Activities in and against Nicaragua*, Nicaragua relied on a statement of the Permanent Court of International Justice which precisely included transportation of persons within the meaning of "commerce". According to Nicaragua:

> "Although it is a larger concept, freedom of commerce includes freedom of trade. Both expressions have a unique French translation: 'liberté de commerce'—which consists, as the Permanent Court pointed out, of 'the right—in principle unrestricted—to engage in any commercial activity, whether it be concerned with a trading properly so-called, that is the purchase and sale of goods, or whether it be concerned with industry, and in particular the transport business; or finally, whether it is carried on inside the country or, by the exchange of imports and exports with other countries' (Oscar Chinn case, Judgment, 1934, P.C.I.J., Series A/B No. 63, p. 84). In the same Judgment, the Court pointed out that
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>> 'According to the conception universally accepted, the freedom of "navigation…comprises freedom of movement for vessels, freedom to enter ports and to make use of plants and docks, to load and unload goods and to transport goods and passengers" (Id., p. 65)
>
> This definition conforms to the conventional and customary rules in force…"[191]

4.47 At the *Jurisdiction and Admissibility* stage, the Court found that to the extent that Nicaragua's claims constituted a dispute as to the "interpretation or application" of the 1956 Treaty, the Court had jurisdiction over those claims.[192] At the *Merits*, Nicaragua repeated its assertions that commerce ought to be given a broad interpretation:

> "Since the word 'commerce' in the 1956 Treaty must be understood in its broadest sense, all of the activities by which the United States has deliberately inflicted on Nicaragua physical damage and economic losses of all types, violate the principle of freedom of commerce, which the Treaty establishes in very general terms."[193]

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[191] *Memorial of Nicaragua (Questions of Jurisdiction and Admissibility), I.C.J. Pleadings, Military and Paramilitary Activities in and against Nicaragua*, Vol I, 403-4 (emphasis added).

[192] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America). Jurisdiction and Admissibility*, I.C.J. Reports 1984, p. 392 (para 83).

[193] *Memorial of Nicaragua*, cited in *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America). Merits*, I.C.J. Reports 1986, p. 14 at 139 (para 278).

The Court concluded that although Nicaragua had not established that the United States Government was responsible for all acts of the *contras*, the prohibition on Nicaraguan vessels entering US ports "and transactions relating thereto" constituted a measure in contradiction with freedom of commerce and navigation in article XIX of the 1956 Agreement.[194]

4.48. In the *Oil Platforms* case, the Court also had the opportunity to analyse the meaning of the word "commerce" used in a bilateral treaty. It said:

> "The Court must now consider the interpretation according to which the word 'commerce' in Article X, paragraph 1, is restricted to acts of purchase and sale. According to this interpretation, the protection afforded by this provision does not cover the antecedent activities which are essential to maintain commerce as, for example, the procurement of goods with a view to using them for commerce.
>
> In the view of the Court, there is nothing to indicate that the parties to the Treaty intended to use the word 'commerce' in any sense different from that which it generally bears. The word 'commerce' is not restricted in ordinary usage to the mere act of purchase and sale; it has connotations that extend beyond mere purchase and sale to include 'the whole of the transactions, arrangements, etc., therein involved' (Oxford English Dictionary, 1989, Vol. 3, p. 552).
>
> In legal language, likewise, this term is not restricted to mere purchase and sale because it can refer to
>
> 'not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and transportation of persons as well as of goods, both by land and sea' (Black's Law Dictionary, 1990, p. 269).
>
> Similarly, the expression 'international commerce' designates, in its true sense, 'all transactions of import and export, relationships of exchange, purchase, sale, transport, and financial operations between nations' and sometimes even 'all economic, political, intellectual relations between States and between their nationals' (*Dictionnaire de la terminologie du droit international* (produced under the authority of President Basdevant), 1960, p. 126 [translation by the Registry]).
>
> Thus, whether the word 'commerce' is taken in its ordinary sense or in its legal meaning, at the domestic or international level, it has a broader meaning than the mere reference to purchase and sale.
>
> Treaties dealing with trade and commerce cover a vast range of matters ancillary to trade and commerce, such as shipping, transit of goods and persons, the right to establish and operate businesses, protection from molestation, freedom of communication, acquisition and tenure of property. Furthermore, in his Report

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[194] Ibid, 139-140 (paras 278-9).

entitled 'Progressive Development of the Law of International Trade', the Secretary-General of the United Nations cites, among a number of items falling within the scope of the Law of International Trade, the conduct of business activities pertaining to international trade, insurance, transportation, and other matters (United Nations, Official Records of the General Assembly, twenty-first session, Annexes, Agenda item 88, doc. A/6396…)

The Court also notes that, in the decision in the Oscar Chinn case (P.C.I.J., Series A/B, No. 63, p. 65), the Permanent Court of International Justice had occasion to consider the concept of freedom of trade under Article I of the Convention of Saint-Germain. The dispute before the Court arose in the context of measures taken by the Belgian Government in relation to river traffic in the waterways of the Congo. The Permanent Court observed:

'Freedom of trade, as established by the Convention, consists in the right 'in principle unrestricted' to engage in any commercial activity, whether it be concerned with trading properly so-called, that is the purchase and sale of goods, or whether it be concerned with industry, and in particular the transport business; or, finally, whether it is carried on inside the country or, by the exchange of imports and exports, with other countries.' (Ibid., p. 84.)

The expression 'freedom of trade' was thus seen by the Permanent Court as contemplating not only the purchase and sale of goods, but also industry, and in particular the transport business.

The Court concludes from all of the foregoing that it would be a natural interpretation of the word 'commerce' in Article X, paragraph 1, of the Treaty of 1955 that it includes commercia' activities in general – not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce."[195]

4.49. In its judgment on the *Merits*, the Court affirmed the broad interpretation given to "commerce" in its earlier judgment:

"…the Court considers that where a State destroys another State's means of production and transport of goods destined for export, or means ancillary or pertaining to such production or transport, there is in principle an interference with the freedom of international commerce. In destroying the platform, whose function, taken as a whole was precisely to produce and transport oil, the military actions made commerce in oil, at that time and from that source, impossible, and to that extent prejudiced freedom in commerce."[196]

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[195] *Oil Platforms (Islamic Republic of Iran v United States of America), Preliminary Objection*, I.C.J. Reports 1996 (II), p. 803 at 818-19 (paras 45-6, 48-9).

[196] *Oil Platforms (Islamic Republic of Iran v United States of America), Merits*, I.C.J. Reports 2003, p. 161 at 198-204 (paras 79-89, esp 89).

4.50. Clearly, for the Court, the term "commerce" is not limited to the operation of purchase and sale of goods: it includes the transportation of persons and can refer to "all economic, political, intellectual relations between States and between their nationals."[197]

4.51. To sum up, the only intelligible meaning that the term "*con objetos de comercio*" as used in article VI of the 1858 Treaty of Limits can have is "for purposes of commerce", i.e. "the purpose[s] or intention[s] to which a thing is directed or pointed", as the 1852 *Dictionary of the Spanish Language of the Spanish Academy* defined "*objeto*".[198] The purposes are those "of commerce", which includes trade but is not confined to it, as Nicaragua itself has already stated before this Court.

(3) Commerce as communication

4.52. As already seen, by its definition navigation implies travel or movement from one place to another. Article VI of the Treaty of Limits provides for the spatial extension from, or to, where this movement can take place:

> "the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river."

4.53. On the Costa Rican bank of the San Juan and on those of its tributaries mentioned in article VI (San Carlos and Sarapiquí), there are villages and towns whose inhabitants use the River as their principal means of communication. Given the lack of roads, as shown in **Sketch Map 3** (opposite page 9 above), there is effectively little choice. But even if there were roads, the River would remain the easiest and most effective way to travel.

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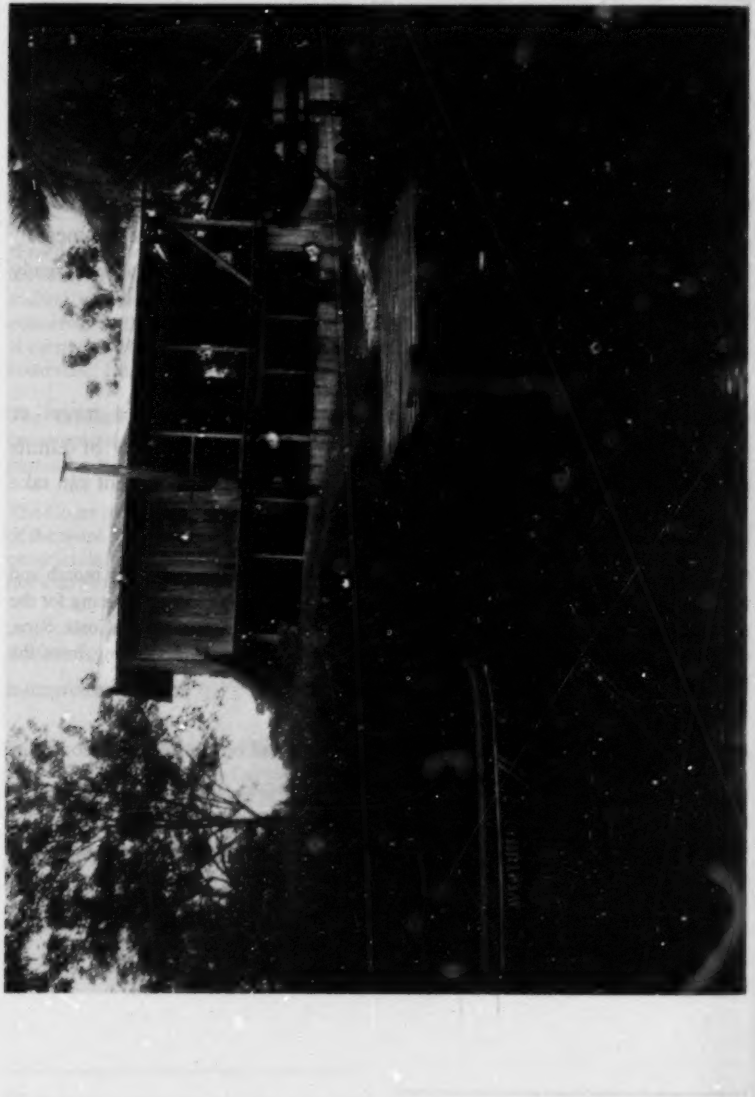
[197] *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection*, I.C.J. Reports 1996 (II), p. 818 (para 45).

[198] La Academia Española, *Diccionario de la lengua castellana por la Academia Española* (10th edn, Madrid: Imprenta Nacional, 1852), 482.



A family on the Costa Rican bank of the San Juan (near La Tigra) with their boat.

School and church on Costa Rican bank of the San Juan.

4.54. The inhabitants have used the waters of the San Juan for communication and contact since the very inception of those villages and towns. They have also used the River to carry on trade with the village of San Juan del Norte. The reasons they travel are those common to human society in any part of the world: for example, contact with family and friends, education, health care, access to their farms, and performing their jobs. This commerce along the River is not only to the advantage of Costa Rican inhabitants, but also to the inhabitants of the only Nicaraguan town on the region, San Juan del Norte, who are economically dependent on trade with their Costa Rican neighbours.

4.55. The use of the San Juan for navigation by Costa Rican government officials as well as by the inhabitants of the region has been vital.[199] The River enables Costa Rican government officials to provide essential services to the local population—a majority of who are of Nicaraguan origin—including health, education and security.

4.56. Navigation through the San Juan for these purposes falls within the rights acknowledged by article VI of the Cañas-Jerez Treaty. The second meaning of the word "*comercio*" given by the *Dictionary of the Spanish Language* of the Spanish Academy contemporary to the conclusion of the Cañaz-Jerez Treaty is "*Comunicación y trato de unas gentes ó pueblos con otros. Commercium, communicatio.*"[200] As stated above, Nicaragua has recognized before this Court that the term "commerce" is larger than "trade". The former includes the latter. This was also the understanding of the Central American Court of Justice in 1916 when it declared that Costa Rica possesses "*el derecho contractual de perpetua navegación en el rio, empezando desde tres millas abajo del Castillo Viejo, comprensivo de la amplia facultad de tránsito y de comercio*".[201] A narrow interpretation of the word "commerce" as meaning exclusively "trade" would be contrary to the ordinary meaning of the term in its context.

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[199] "San Juan: Calm and uneasiness", *La Nación*, San José, 4 July 1999: Annexes, Vol 5, Annex 155.

[200] Translation by Costa Rica: "Communication and dealing of people or towns with others. *Commercium, communicatio*": La Academia Española, *Diccionario de la lengua castellana por la Academia Española* (10th edn, Madrid: Imprenta Nacional, 1852), 170.

[201] Annexes, Vol 2, Annex 21 at 222: "the contractual right of perpetual navigation in the river, beginning at a point three miles below Castillo Viejo, accompanied by the full privilege of transit and commerce".

4.57 Costa Rican boats have a perpetual right of free navigation for the purpose of communication between the villages and towns, or any other point situated on the Costa Rican bank of the San Juan, to any place on both banks of the River where navigation is common, or to the interior of Costa Rica, through the San Carlos River, the Sarapiquí, or any other route proceeding from the Costa Rican bank of the San Juan, as stated in article VI of the Treaty of Limits. This was the practice before the Treaty and has remained so since, and until the present dispute arose.

(4) Commerce as transportation of goods and persons (including tourism)

4.58. It is evident that the transportation of persons, including the transportation of tourists along the San Juan, falls within the activities pursued "*con objetos de comercio*" ("for the purposes of commerce"), in accordance with article VI of the Treaty of Limits. Transport of passengers is a longstanding commercial activity.

4.59. Indeed in the 1850s the most important commerce carried out on the San Juan was the transport of passengers. The San Juan was well-known at the time as a transit route, given the tens of thousands of passengers that used its waters to travel from the east coast of the United States of America to its west coast, as well as those migrants travelling to San José and other localities in Costa Rica. The Californian gold rush merely intensified the use of the River as a route for passengers.

4.60. Throughout the 19th century there was substantial commercial transportation of passengers, both leaving from and coming to Costa Rica. Most of the European immigrants who settled in Costa Rica during the second half of the 19th century used this route (the Atlantic port of Limón not yet having been developed). They arrived at San Juan del Norte Bay, navigated upstream on the San Juan to the Sarapiquí River, and from there, the trip followed by mule to the interior.

4.61. The Treaties of Friendship, Commerce and Navigation concluded by Nicaragua with France and Great Britain, respectively on 11 April 1859 and 11

February 1860, offer striking evidence that the 1858 Cañas-Jerez Treaty, when referring in its article VI to "*objetos de comercio*", included both transportation of goods and persons. After regulating the rights and duties of the parties with regard to a possible construction of an inter-oceanic route, both article XXXIII of the France-Nicaragua Treaty of 1859 and article XXVI of the Great Britain-Nicaragua Treaty of 1860 provide the same safeguard:

> "It is understood that nothing contained in this Treaty shall be construed to affect the claim of the Government and citizens of the Republic of Costa Rica to a free passage, by the San Juan river, for their persons and property, to and from the ocean."[202]

4.62. By these treaties with France and Great Britain, Nicaragua evidently sought to preserve the existing rights of a third State (Costa Rica) recognised by it in a prior treaty, the Treaty of Limits.

4.63. International practice contemporary to the Treaty of Limits also shows that, by referring to freedom of navigation with purposes of commerce, States had in mind transport of not only goods but also persons. The following treaties can be cited as evidence of this understanding:

(a) Treaty of Commerce and Navigation between Austria and Belgium of 2 May 1854;[203]

(b) Treaty of Commerce and Navigation between Sweden-Norway and the Two Sicilies of 10 April 1856;[204]

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[202] France-Nicaragua, Traité d'Amitié, de Commerce et de Navigation, Washington, D.C., 11 April 1859, art XXXIII, 120 CTS 337, 351; Great Britain-Nicaragua, Treaty of Friendship, Commerce and Navigation, Managua, 11 February 1860, art XXVI, 121 CTS 363, 383. The Spanish text reads as follows: "Queda entendido que nada de lo contenido en este Tratado deberá entenderse que afecta el reclamo del Gobierno y ciudadanos de la República de Costa Rica de un libre pasage de sus personas y propiedades por el Río San Juan del océano y para el océano." The French text is: "Il est entendu que rien de ce qui est contenu dans ce Traité ne devra être compris de façon à affecter la réclamation du Gouvernement et des citoyens de la République de Costa Rica à un libre passage par la rivière San-Juan pour leurs personnes et leurs propriétés de l'océan et vers l'océan".

[203] Article III reads as follows: "Cette liberté de navigation comprend pour les navires et sujets des 2 Hautes Parties Contractantes, la faculté de faire le commerce d'entrée et de sortie dans la même étendue que les navires et sujets nationaux, tout comme aussi la faculté de se livrer à toutes les opérations commerciales dont l'exercice est permis en vertu des lois. *Quant au transport des personnes et des marchandises* d'un port à l'autre, dans les Etats respectifs des Hautes Parties Contractantes, la liberté de commerce est réciproquement soumise aux restrictions généralement existantes pour la navigation des nations étrangères les plus favorisées dans chacun des 2 pays, sans que pour cela le commerce réciproque provenant des ports étrangers, ou dirigé vers de tels ports, ait à éprouver aucune limitation" (emphasis added): 111 CTS 431.

[204] The Treaty did not recognise the extension of the freedom of navigation and commerce between two ports located on the territory of the same State, stating that "la navigation des côtes ou du cabotage demeurant exclusivement réservée aux bâtiments nationaux *pour le transport tant des marchandises que des personnes*": Article IV (emphasis added): 114 CTS 480.

(c) Act for the Navigation of the Danube between Austria, Bavaria, Turkey and Württemberg of 7 November 1857;[205]

(d) Treaty of Peace, Friendship and Commerce between China and Great Britain of 26 June 1858.[206]

4.64. In the early 1970s Costa Rican entrepreneurs started organizing tourist journeys through different rivers and waterways in Costa Rica,[207] the most notable being the route starting in Puerto Viejo de Sarapiquí, following the Sarapiquí River, using the San Juan to access the Colorado River, and then on to Barra del Colorado or continuing to the Tortugero Canals, and back again using the same route. Transit through the San Juan was necessary in order to transport those passengers within Costa Rican territory. But commercial navigation of passengers for tourism purposes has also been conducted with Nicaragua, as with the Río Indio Lodge and San Juan del Norte. See **Sketch Map 6** on the following page.

4.65 These tourist routes have been used by Costa Rican boatmen, tour operators, hotel owners and sport fishing resorts for many years without any interference or objection from Nicaragua.[208]

4.66. Of course tourism is a commercial activity. Within the World Trade Organization, tourism is a service sector covered by the General Agreement on Trade in Services (GATS). The GATS' schedules largely follow a classification based on the United Nations Central Product Classification (CPC) system, which identifies 11 basic service sectors, plus a 12th category for

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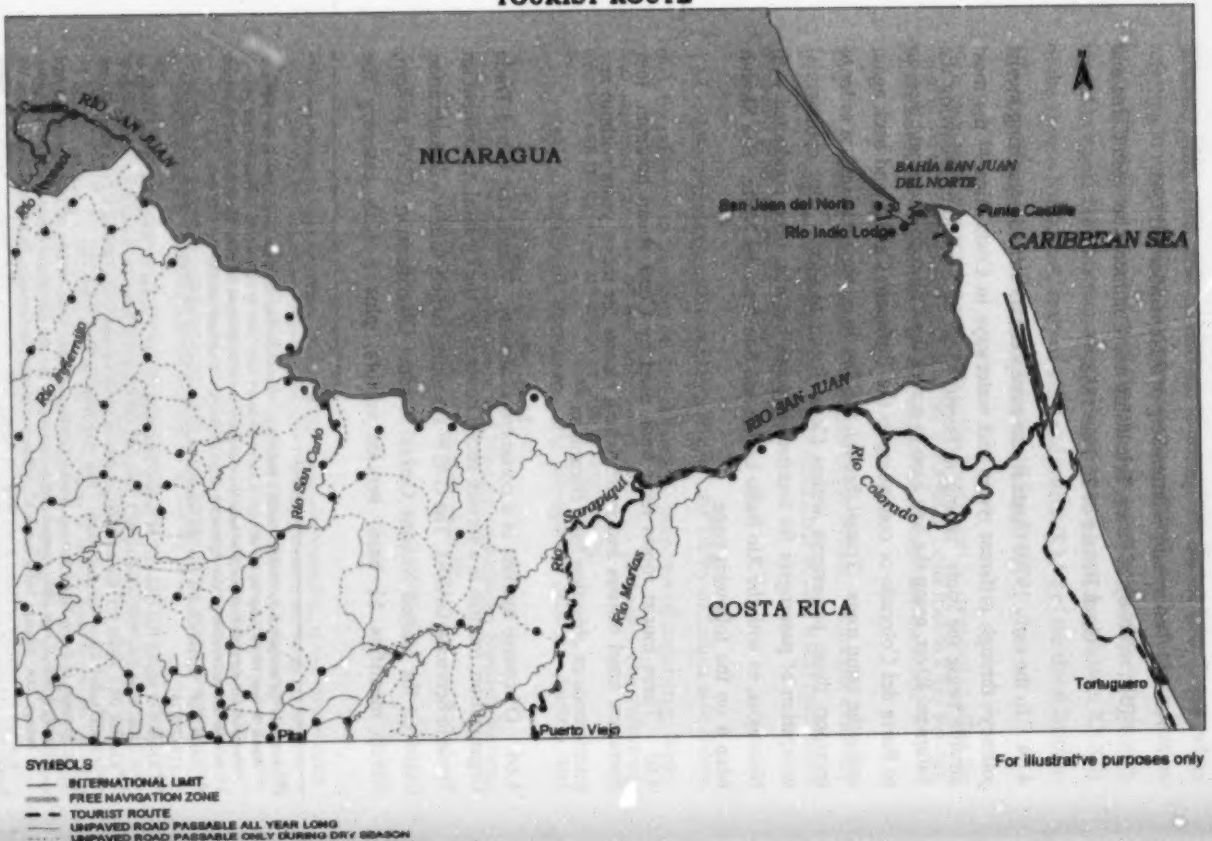
[205] Article I: "La navigation du Danube, depuis l'endroit où ce fleuve devient navigable jusque dans la mer Noire, et depuis la mer Noire jusqu'au dit endroit, *sera entièrement libre sous le rapport du commerce, tant pour le transport des merchandises que pour celui des voyageurs* ; en se conformant toutefois aux dispositions du présent Acte de navigation ainsi qu'aux règlements de police fluviale" (emphasis added): 117 CTS 474.

[206] Article XIV: "British subjects may hire whatever boats they please for the transport of goods or passengers…": 119 CTS 167.

[207] Affidavit of Marvin Hay-Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; Affidavit of Wilton Hodgson Hodgson, 1 February 2006: Annexes, Vol 4, Annex 96; and Affidavit of Ruben Lao Hernández, 17 February 2006: Annexes, Vol 4, Annex 103. See also Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Minister of Public Safety, Angel Edmundo Solano, 7 June 1982: Annexes, Vol 6, Annex 223.

[208] See Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Minister of Public Security, Angel Edmundo Solano, 7 June 1982: Annexes, Vol 6, Annex 223. See also Affidavit of Santos Martin Arrieta Flores, 27 January 2006: Annexes, Vol 4, Annex 87; Affidavit of Marvin Hay-Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; Affidavit of Daniel Reese Wise, 29 January 2006: Annexes, Vol 4, Annex 95; Affidavit of Wilton Hodgson Hodgson, 1 February 2006: Annexes, Vol 4, Annex 96; and Affidavit of Ruben Lao Hernández, 17 February 2006: Annexes, Vol 4, Annex 103.

Sketch map 6
TOURIST ROUTE


NICARAGUA
RIO SAN JUAN
Rio
Rio Infiernito
Rio San Carlos
BAHÍA SAN JUAN DEL NORTE
San Juan del Norte
Rio Indio Lodge
Punta Castilla
CARIBBEAN SEA
RIO SAN JUAN
Rio Colorado
Rio Sarapiquí
Rio Marias
COSTA RICA
Tortuguero
Pital
Puerto Viejo
SYMBOLS
INTERNATIONAL LIMIT
FREE NAVIGATION ZONE
TOURIST ROUTE
UNPAVED ROAD PASSABLE ALL YEAR LONG
UNPAVED ROAD PASSABLE ONLY DURING DRY SEASON

For illustrative purposes only

miscellaneous services. "Tourism and travel related services" is one of these 12 basic service sectors. The tourism category breaks down into sub-sectors for hotels and restaurants, travel agencies and tour operators, tourist guide services and other related services. Tourism services are included in the new services negotiations which began in January 2000.[209]

4.67. As the Convention establishing the Sustainable Tourism Zone of the Caribbean, signed on Margarita Island, 12 December 2001, explains in its preamble:

> "Tourism constitutes the main economic activity for most countries of the region referred to as the Greater Caribbean, and it represents in itself, a significant factor in foreign exchange earnings, economic and social development."[210]

Both Costa Rica and Nicaragua are signatories to this Convention, though neither has yet ratified it.

4.68. In the *Kasikili/Sedudu Island* case the Court recalled that the Parties interpreted the notion of freedom of navigation as including movement of tourist boats. In particular, the Court mentioned, this applied to the southern channel whose waters *and banks* are entirely within Botswana. The Court recalled the Parties' agreement with regard to non-impediment of navigation "including free movement of tourists".[211]

4.69. It is worth noting that the Nicaraguan Minister of Tourism Pedro Joaquín Chamorro, shortly before becoming Minister of Defence, recognized that navigation for purposes of tourism is included within Costa Rica's navigational rights. On 26 July 1998, Minister Chamorro affirmed that he was not opposed to Costa Rica using the San Juan for purposes of tourism, since "this is the modern way of commerce" (although he disagreed with what he called "Costa Rican heavily armed transit navigation").[212]

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[209] http://www.wto.org/english/tratop_e/serv_e/tourism_e/tourism_e.htm#top. Equally, in the framework of the UNCITRAL Model Law on International Commercial Arbitration adopted on 21 June 1985, "commercial" is interpreted as covering "matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing,; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road." (United Nations, doc. A/40/17, annex I).

[210] www.acs-aec.org/Documents/Misc/STZC_LEGAL_DOC_AND_INDICATO.DOC.

[211] *Kasikili/Sedudu Island (Botswana/Namibia)*, I.C.J. Reports 1999, p. 1049, 1071-2, 1106-8 (paras 40, 102, 103). See also the declarations of Judges Ranjeva (ibid, 1110) and Koroma (ibid, 1112).

4.70. The 1956 Agreement provides both further evidence of the existence of the right of navigation for the transport of persons in accordance with the Treaty of Limits and the Cleveland Award, and an additional basis for assuring this right. Article 1 of the 1956 Agreement provides that Costa Rica and Nicaragua…

> "shall collaborate to the best of their ability in order to carry out those undertakings and activities which require a common effort by both States and are of mutual benefit and, in particular, in order to facilitate and expedite traffic on the Pan American Highway and on the San Juan River within the terms of the Treaty of 15 April 1858 and its interpretation given by arbitration on 22 March 1888, and also to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other."[213]

4.71. The reference to "traffic" on the San Juan can only be understood as including transportation of both goods and persons. This is its ordinary meaning, as found in standard dictionaries.[214] The same can be said of the reference to "transport services". By requiring both parties "to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other", article 1 of the 1956 Agreement creates a further legal ground for the transportation of persons through the San Juan by Costa Rican boats.

4.72. For all these reasons it is clear that Costa Rica possesses a right of navigation for transportation of persons, including tourists, in the stretch of the San Juan where it has a perpetual right of free navigation.

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[212] "Costa Rica Exhibits its 'Army' on the San Juan River", *La Prensa*, Managua, 26 July 1998: Annexes, Vol 5, Annex 138. See also "Chamorro objects to Patrols", *La Nación*, San José, 27 July 1998: Annexes, Vol 5, Annex 139.

[213] Annexes, Vol 2, Annex 24.

[214] According to the *Diccionario de la Lengua Española de la Real Academia Española*, "tráfico" has the following meanings: "Acción de traficar. 2. Circulación de vehículos por calles, caminos, etc. 3. Por ext., movimiento o tránsito de personas, mercancías, etc. por cualquier otro medio de transporte" (21st edn, Madrid: Espasa Calpe, 1992), vol. I, 2005. Translation by Costa Rica: "Action of trafficking. 2. Circulation of vehicles through streets, roads, etc. 3. By extension, movement or traffic of people, merchandizes, etc. by any means of transportation". The *Oxford Dictionary of English* attributes as first meaning of the word "traffic" the following: "vehicles moving on a public highway: *a stream of heavy traffic.* • the movement of ships, trains, aircraft, or pedestrians: *Europe's air traffic.* • the transportation of goods or passengers: *the increased use of railways for goods traffic.*": (2nd edn, Oxford: Oxford University Press, 2003), 1870. In French, "trafic" is defined as "Ensemble des transports de marchandises ou de voyageurs, ou de circulations de véhicules ou de bâtiments, qui s'effectuent, pendant une durée définie (jour, mois, année), sur une voie de communication ou sur l'ensemble des voies d'un territoire": *Grand Dictionnaire Encyclopédique Larousse* (Paris: Larousse, 1985), vol. 10, 10340.

D. Costa Rica's right of protection of commerce and revenue control

4.73. Costa Rica's understanding of article VI of the Treaty of Limits has been consistent. As mentioned above, the perpetual right of free navigation is a State right and as such it is not limited to private vessels. Public vessels also enjoy this right. This was the position successfully upheld by Costa Rica before President Cleveland in 1888 and it is its position today.

4.74. By Decree No XXXI of the Costa Rican Government, dated 16 March 1886, a guard (one officer, five men) was created at the mouth of the Colorado River "with the purpose of establishing the necessary surveillance of contraband in the Atlantic coast of the Republic."[215] Decree No XXXII of the same date gave further detail as to this "maritime and terrestrial guard", which was to have at its disposal "a national steamer" with a crew of four. That Decree gave the guard various functions, including:

> "1st- To prevent contraband in the waters and territories of its circumscription.
> ...
>
> 5th- To reconnoitre at least once a week the Rivers San Juan, Colorado, Sarapiquí, and San Carlos; the first in the whole extent that it is navigable for Costa Rica, the second in its entire extent, and the latter two along the entire stretches that are navigable by steamer.
> The itinerary shall be reserved in order that the guard's actions are not eluded.
> 6th- To institute preliminary proceedings and to report seizures to the respective authority at Limon."[216]

4.75. Nicaragua opposed these instructions on the basis that they would go beyond Costa Rica's entitlements. Costa Rica rejected this contention, on the following grounds:

> "I should add that Costa Rica has the perpetual right to navigate the San Juan River, or part of it, in accordance with the treaty: that it is obliged, and naturally so, to guard and defend the river, since it has the use of its waters, and because a part of its right bank belongs to it, because the river is the common entry to both Republics, and it is in the direct interests of both to defend it: that, given this obligation, Costa Rica may use the necessary means to fulfil it and it may, for the same reason, navigate the river in any kind of vessel: that, in order to do so, Costa Rica does not require Nicaragua's approval or request, since it would not be acting as Nicaragua's ally but in the exercising of its own right: and that, should the opposite occur, Costa Rica would be left totally defenceless at Nicaragua's will."[217]

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[215] Annexes, Vol 6, Annex 205.

[216] Annexes, Vol 6, Annex 206.

[217] Costa Rican Foreign Minister, Ascensión Esquivel, to Nicaraguan Foreign Minister, Francisco Castellón, 31 August 1886: Annexes, Vol 3, Annex 34.

4.76. The matter was referred to President Cleveland as one of Nicaragua's disputed points. In its pleadings before President Cleveland, Costa Rica began by noting that article VI of the Treaty was not expressed in exclusive terms. It asserted as "beyond discussion that Costa Rica can navigate in the San Juan river with public vessels, which are not properly men-of-war". It noted the rights of Nicaragua under the Treaty to bring cargo to the Costa Rican bank:

> "this permission, or right, presupposes, necessarily, the correlative right of Costa Rica to watch its own banks by the only practicable means, which is the revenue police, during the whole course of the river navigable for Costa Rica."

Otherwise Costa Rica would be at the mercy of smugglers.[218] The Reply went on to deal separately with men-of-war, which it supported largely by analogy from other situations, pointing out that the prohibition of acts of war on the San Juan did not entail the prohibition of navigation.[219] It also argued by implication from the duty of Costa Rica to defend its bank under the Treaty that it had the necessary correlative right to use regular men-of-war on the River for that purpose.[220]

4.77. Nicaragua's argument also largely focused on men-of-war. As to customs vessels it argued that:

> "Vessels of the revenue service are akin to vessels of war. While they have not all the means of aggression as the former, still they are armed vessels, capable of enforcing their demands by force, and must be classed in the same category as vessels of war. Neither have the right, under a commercial license, to invade the territory, domain, or sovereignty of the Republic of Nicaragua."[221]

4.78. So far as the fourth question raised by Nicaragua is concerned, the terms of President Cleveland's Award were as follows:

> "Second. The Republic of Costa Rica under said treaty and the stipulations contained in the sixth article thereof, has not the right of navigation on the river San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service

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[218] Pérez Zeledón, *Argument*, 156: Annexes, Vol 6, Annex 207.

[219] Ibid, 158.

[220] Ibid, 159-160.

[221] *Reply of the Republic of Nicaragua to the Case of the Republic of Costa Rica*, 49: Annexes, Vol 6, Annex 208.

> as may be related to and connected with her enjoyment of the 'purposes of commerce' accorded to her in said article, or as may be necessary to the protection of said enjoyment."[222]

4.79. Hence the Award made it clear that, although it did not have a right to navigate with vessels of war, Costa Rica does have a right to navigate with vessels of the revenue service (which were public armed vessels). The Award also detailed the scope of this right of navigation: (1) when related to and connected with the enjoyment of the "purposes of commerce" and (2) as necessary for the protection of its enjoyment of that right of navigation.

4.80. The recognition of a right of navigation for public vessels of a neighbouring country was not exceptional in Latin America at that time. It can be explained by the fraternal relations existing among the region and their collaborative efforts to preserve their independence. Treaties concluded at the time show that this right of navigation with public vessels even extended to war vessels. The following are examples:

(a) Convention on fluvial navigation concluded between the Argentine Confederation and Brazil of 20 November 1857 (article 3);[223]

(b) Agreement on the navigation of Putumayo and Iza Rivers between Brazil and Peru of 29 September 1876 (article 5);[224] and

(c) Treaty of Commerce and Fluvial Navigation between Bolivia and Brazil of 12 August 1910 (article 16).[225]

There are also examples in other regions of the world in which the right to navigate with war vessels was accorded to a neighbouring State.[226]

4.81. In drawing a distinction between men-of-war and revenue cutters, the Cleveland Award evidently took into account contemporary naval practice, and the distinction would have been familiar to all concerned. In the mid-to-late 19th century, revenue cutters were coastguard vessels, lightly armed auxiliary vessels used for a variety of purposes associated with the enforcement of customs, quarantine and revenue laws. In case of need they could be used as auxiliary vessels for naval purposes, e.g. in the enforcement of blockades, and United States naval cutters of the Civil War period led exciting and dangerous lives. A useful illustrated review of this period is provided by DL Canney, *U.S. Coast Guard and Revenue Cutters 1790-1935*. Canney notes that what is now the United States Coast Guard was previously called the United States Revenue Cutter Service, "a domestic law enforcement agency originally under the Treasury Department".[227] Initially cutters were small or medium-sized sailing vessels, built for economy rather than speed.

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[222] Annexes, Vol 2, Annex 16.

[223] 118 CTS 45, 47.

[224] 151 CTS 93.

[225] 211 CTS 388, 390-1.

[226] See notably the Treaty between Iraq and Iran concerning the boundary along the Shatt-al-Arab, 4 July 1937, Article 4(b), 190 LNTS 241.

> "In the first group of cutters, built in 1791 and 1792, armament was limited to the small arms issued to the crewmen and small swivel guns. Subsequently, the vessels rarely carried more than six relatively small cannon. Only when the cutters were called in to assist with naval operations did armament increase significantly."[228]

4.82. United States cutters in service at the time of the Cleveland Award include, for example, the *Corwin* (commissioned 1877, eight officers and 33 enlisted men, three guns, a veteran of the Bering sea patrol), the *Forward* (commissioned 1882, seven officers and 31 enlisted men, two guns) and the *Fessenden* (commissioned 1883, seven officers and 33 enlisted men, four guns; she was the last side-wheel steamer and spent most of her career cruising on the Great Lakes).[229]

4.83. It is true that President Cleveland excluded the possibility of Costa Rica navigating with vessels of war. But he acknowledged that other public vessels could do so, particularly "such vessels of the Revenue Service as may be related to and connected with her enjoyment of the 'purposes of commerce' accorded to her in said article, or as may be necessary to the protection of said enjoyment."[230]

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[227] DL Canney, *US Coast Guard and Revenue Cutters 1790-1935* (Naval Institute Press, Annapolis, 1995), xiii. Copies of this work have been deposited with the Registrar.

[228] Ibid, 1.

[229] Ibid, 44-6.

[230] Cleveland Award, Second point: Annexes, Vol 2, Annex 16.

4.84. It is significant that in opposing before President Cleveland Costa Rica's use of revenue cutters, Nicaragua referred to them as "armed vessels, capable of enforcing their demands by force". But President Cleveland refused to assimilate those vessels of the revenue service to war vessels. Only the latter were declared to be excluded from the perpetual right of free navigation recognised by the Cañas-Jerez Treaty.

4.85. Following the Cleveland Award, Costa Rica continued to navigate with armed personnel on revenue cutters or other vessels on the lower part of the River and Nicaragua respected this right. This can be seen from an incident that occurred at the place where the San Juan ceases to be the boundary between Costa Rica and Nicaragua. On 21 February 1892, the Costa Rican steamer *Adela* began its voyage, with the Commander of a fiscal post and eight guards on board, at the mouth of San Carlos River in the direction of Castillo Viejo. The purpose of the journey was to install the Guards at the fiscal post at Terrón Colorado, Los Chiles, on the Costa Rican side of the border near the source of the San Juan in the Lake of Nicaragua.

4.86. The author of the report relates that "before entering the waters under the exclusive dominium of Nicaragua, I did hide in Costa Rican territory the arms and ammunitions that I carried for that post [*resguardo*]."[231] Then the Commander went by boat to the post of Castillo Viejo to request Nicaraguan permission to continue navigating on the San Juan with their arms and personnel, explaining "the fiscal purpose" of that journey, i.e. installing the guards in their post. The Nicaraguan official, after consulting the Ministry of War of Nicaragua, denied permission and the Costa Rican Commander was obliged to transport its arms and ammunition by land, which was extremely difficult to do.[232]

4.87. This account shows the significant distinction between navigation on the part of the San Juan that constitutes the border between Costa Rica and Nicaragua, and the part of the River where both banks are Nicaraguan. In the former, navigation of a steamer carrying fiscal guards with their arms and ammunition was usual and did not provoke objection or response from the Nicaraguan authorities. In the latter, such a right of navigation did not exist; on this occasion the Costa Rican commander requested permission, which was denied.

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[231] Letter of Ciro A. Navarro, Assistant to the Inspectorate to the Inspector General of the Treasury, 9 March 1892 (translation by Costa Rica): Annexes, Vol 6, Annex 209.

[232] Ibid.

4.88. Another Nicaraguan agent was prepared to be more flexible. The Chief of the Costa Rican Guard (*resguardo*) of El Colorado informed his superiors that the Customs Administrator of Nicaragua in San Juan del Norte had authorised him to seize contraband and criminals *on the Nicaraguan shores* and also that he "had free passage with [his] armed guards through the Castillo in case I wanted to carry out any mission in Rio Frio".[233] The latter position is located further west of the Castillo Viejo. Clearly, this authorisation allowed official navigation on the San Juan beyond the waters that form the common boundary. By contrast there was no need for authorisation in respect of areas of the San Juan where the navigation was common.

4.89. Reports from 1893 to 1909 refer to the substantial activities of the fiscal guards ("*resguardos*") in the region of the border of the San Juan. Undoubtedly these fiscal guards used the San Juan to perform their duties.[234]

4.90. Costa Rica has always respected the prohibition on navigation with vessels of war. Indeed, since the adoption of the Political Constitution of 1949, Costa Rica does not possess an Army and there is no material possibility for Costa Rica to breach this obligation: Costa Rica does not have any vessels of war, but only police vessels with minimum defensive capacity. Photographs of the relevant vessels are shown **opposite**.

4.91. Costa Rica's right to navigate with fiscal vessels was accurately described by Costa Rica before the Central American Court of Justice as follows:

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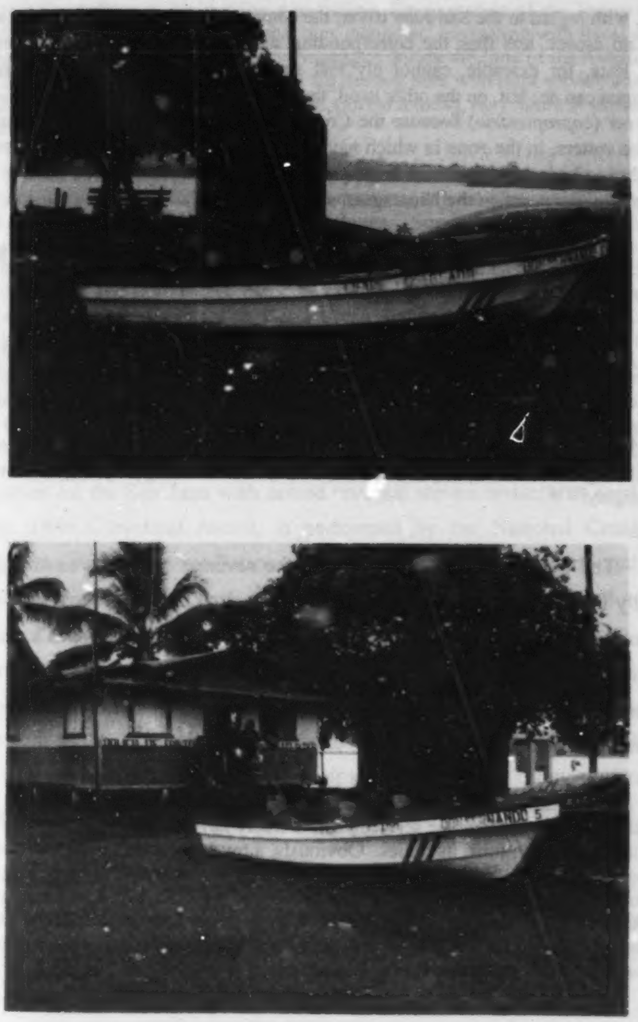
[233] Report of the Chief of the Guard [*resguardo*] of Colorado, Juan Francisco Zeledón, to the General Inspector of the Treasury, 31 October 1892 transcripted in Document N. 97 from the Inspector of the Treasury to the Secretary of State in charge of the Treasury, dated 8 November 1892: Annexes, Vol 6, Annex 210.

[234] In a Report of 31 March 1894, the Commander of the Post Río Colorado-Colonia informed the General Inspector of Treasury of activities carried between 1893 and 1894. He mentioned the existence of posts at Rosalía, El Toro and the confluence of the Reventazón and Parismina Rivers: Annexes, Vol 6, Annex 211. A Report of 10 March 1895 set out the jurisdiction of the different Guards under the jurisdiction of El Colorado and their activities: Annexes, Vol 6, Annex 212. See also the Report of 16 March 1906 concerning the same region: Annexes, Vol 6, Annex 213, as well as the proposal for the creation of a new guard at the confluence of the River Chirripó with the Colorado. See Sub-Inspector to the Treasury of Colorado to the General Inspector of the Treasury, 24 November 1908: Annexes, Vol 6, Annex 215, and the Report of 7 December 1909 relating to police activities displayed by the Guard of Colorado concerning the Costa Rican bank of the San Juan. See Sub-Inspector to the Treasury of Barra del Colorado to the General Inspector of the Treasury, 7 December 1909: Annexes, Vol 6, Annex 216.



Police boat that was formerly used for re-supply operations of Costa Rican police posts in the San Juan region.

> "That, with regard to the San Juan River, the conventional rights of Costa Rica are, in a certain aspect, less than the corresponding rights of co-ownership (*condominio*): Costa Rica, for example, cannot ply that stream with war vessels as, of course, Nicaragua can do; but, on the other hand, those rights are greater than those of a mere co-owner (*copropietario*) because the Costa Rican vessels, as well merchantmen as revenue cutters, in the zone in which navigation is common, have a free course over the whole river, throughout its length and breadth, and free access, exempt from imposts, to any point on the Nicaraguan shore."[235]

4.92. In its Judgment, the Court acknowledged the extent of Costa Rica's rights stating that:

> "The proposition that the rights of navigation on the San Juan River that were confirmed in Costa Rica do not extend to vessels of war, but simply to vessels devoted to revenue and defensive purposes—an interpretation that in no way detracts from the doctrine set forth concerning the practical ownership pertaining in great part to Costa Rica over the San Juan River because navigation with vessels of war, aside from constituting a cause for disquiet, would imply a function appropriate to territorial sovereignty."[236]

4.93. The purpose of those vessels of the revenue service was and still is broadly the same: to prevent contraband, smuggling and trafficking of persons and other related activities proper to border areas. Costa Rica's Foreign Minister Roberto Rojas López, in his intervention before the Permanent Council of the Organization of American States on 8 March 2000, summarized the situation as follows:

> "The Award—accepted by both countries without objection—acknowledges Costa Rica the right that its revenue service vessels freely navigate on the lower part of the San Juan in order to fulfil its duties. Obviously, a revenue service vessel, destined by its own nature to fulfil services such as preventing contraband, illegal immigration, drug trafficking and other aspects involved in border control, will necessarily require that the governmental agents transported in it carry protective equipment. If not, how can they be expected to perform these tasks? No fiscal police in the world can achieve this only through requests or verbal suggestions.

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[235] Annexes, Vol 2, Annex 21, 197. Original Spanish: "Que en cuanto al río San Juan los derechos convencionales de Costa Rica son en cierto aspecto menores que los correspondientes al condominio: Costa Rica no puede, por ejemplo, surcar esa corriente con naves de guerra, como sí puede hacerlo Nicaragua, de seguro; pero por otra parte, son mayores que los de una mera copropiedad porque los barcos costarricenses, así mercantes como fiscales en la zona en que la navegación es común, tienen libre curso en todo el río, a lo largo y a lo ancho y libre acceso, exento de impuestos, a cualquier lugar de la ribera nicaragüense.

[236] Annexes, Vol 2, Annex 21, 220. Original Spanish: "El concepto de que los derechos de navegación otorgados a Costa Rica en el río San Juan no se extienden a buques de guerra, sino simplemente a embarcaciones para fines fiscales y defensivos; interpretación que en nada desvirtúa la doctrina expuesta sobre el dominio útil que a Costa Rica corresponde en gran parte del río San Juan, porque la navegación con buques de guerra además de poder construir una causa de intranquilidad, implicaría una función propia del soberano territorial."

> Note that Costa Rica is not making a capricious interpretation of the Treaty or the Award, but is only defending a right that they guarantee: navigating with fiscal service vessels which, as it was understood by Nicaragua during the time of the Award, were vessels that carried arms. Of course, we are dealing here with light service arms that are duly registered and which at no moment, not even today, may injure or threaten the sovereignty or security of Nicaragua.
>
> Since the late 19th century, Costa Rica organized its fiscal guards at the border region with Nicaragua. One of its tasks was to reconnoitre, at least once a week, the lower part of the San Juan in order to fulfil its duties. Surveillance was performed by personnel with service arms. Nicaragua not only did not protest against the surveillance activities by Costa Rican Police, but, as is confirmed in many documents from the period and from recent years, in various opportunities its border authorities performed coordinated tasks with Costa Rican authorities. As a result, it can be concluded that the Cleveland Award, in the opinion of the Nicaragua government, authorized the navigation of Costa Rican fiscal service vessels, with crew that carried service arms."[237]

4.94. In modern times, Costa Rica's right to protect its commercial navigation on the San Juan with armed revenue service vessels, as confirmed by the 1888 Cleveland Award, is performed by the National Coastguard Service, the Fiscal Control Police, the Border Police and the Rural and Civil Guards, navigating on Costa Rican official vessels. **Appendix B** of this Memorial sets out the administrative position as it has evolved.[238]

4.95. As attested by several witnesses, Costa Rican police—who were referred to as the *Resguardo* until the mid-1970s—regularly navigated the San Juan with personnel openly carrying their service weapons. They even carried out joint tasks with the Nicaraguan armed forces.[239]

4.96. To sum up, Costa Rica's perpetual right of free navigation with official vessels and armed personnel in order to protect commerce stems from the Treaty of Limits, as interpreted by the Cleveland Award and affirmed by the 1916 Judgment.

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[237] Translation by Costa Rica, OEA/Ser. G CP/ACTA 1224/00, 8 March 2000, 16: Annexes, Vol 6, Annex 228.

[238] Of particular relevance are the Rural Assistance Guard Law No. 4639 of 23 September 1970: Annexes, Vol 6, Annex 220, modified by Law No. 4766 of 28 May 1971: Annexes, Vol 6, Annex 221; the General Law of Police, Law No. 7410 of 26 May 1994: Annexes, Vol 6, Annex 226; and the Law of Creation of the National Coastguard Service, Law No. 8000 of 5 May 2000: Annexes, Vol 6, Annex 230.

[239] Affidavit of Carlos Luis Alvarado Sanchez, 27 January 2006: Annexes, Vol 4, Annex 88; Affidavit of Daniel Soto Montero, 27 January 2006: Annexes, Vol 4, Annex 89; Affidavit of Luis Angel Jirón Angulo, 28 January 2006: Annexes, Vol 4, Annex 90; Affidavit of José Granados Montoya, 29 January 2006: Annexes, Vol 4, Annex 94; and Affidavit of Ruben Lao Hernández, 17 February 2006: Annexes, Vol 4, Annex 103.

E. Rights and obligations to safeguard (*guarda*) the River and to contribute to its defence, as well as defence of the common bays

4.97. According to article IV of the 1858 Treaty:

> "The Bay of San Juan del Norte, as well as the Salinas Bay, shall be common to both Republics, and so, consequently, shall be their advantages, and the obligation to defend them. Costa Rica shall also be obliged, for the part that belongs to her of the banks of the San Juan River, and in the same terms as Nicaragua is by Treaties, to contribute to the security thereof in the same manner as the two Republics shall contribute to its defence in case of aggression from abroad; and they shall do this as effectively as shall be in their power."[240]

4.98. In its 1916 Judgment the Central American Court of Justice recalled the existence of this Costa Rican right and the obligation to safeguard and defend the San Juan:

> "Costa Rica possesses undisputed title to the right bank of the river, to the land situated within her jurisdictional limits; she has joint ownership in the ports of San Juan del Norte and in Salinas Bay; she possesses the contractual right of perpetual navigation in the river, beginning at a point three miles below Castillo Viejo, accompanied by the full privilege of transit and commerce, and Nicaragua is impressed with the duty not to interfere with navigation, but, on the contrary, to keep the course of the river open; Costa Rica enjoys also the right to moor her vessels on both banks throughout the entire zone in which navigation is common, and the rights involved in guarding and defense 'with all means within her reach."[241]

4.99. As a consequence of the existence of rights and obligations for both parties in relation to the San Juan, as well as their shared sovereignty over the bays of San Juan del Norte and Salinas, article IV of the 1858 Treaty of Limits grants rights and imposes obligations on both States. Article IV distinguishes three sets of rights and obligations: (1) the defence of the common bays, (2) the safeguarding of the San Juan and (3) the defence of the River in case of aggression. Nicaragua argues that article IV refers to the third obligation only, and that even in such a case Costa Rica's defence of the River should be accomplished exclusively from its own bank.[242] Although interrelated, these are separate rights and obligations. The first two are permanent and continuous: they have existed ever since the entry into force of the 1858 Treaty. The third is envisaged in case of aggression. In assimilating the case of aggression to the other two, Nicaragua effectively rejects Costa Rica's rights and obligations to defend the bay of San Juan del Norte and to safeguard the San Juan where navigation is common.

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[240] This translation is taken from *British and Foreign State Papers*. The original text reads as follows: "La Bahía de San Juan del Norte, así como la de Salinas, serán comunes a ambas Repúblicas, y por consiguiente lo serán sus ventajas y la obligación de concurrir a su defensa. También estará obligada Costa Rica por la parte que le corresponde en las márgenes del río de San Juan, en los mismos términos que por tratados lo está Nicaragua, a concurrir a la guarda de él; del propio modo que concurrirán las dos Repúblicas a su defensa en caso de agresión exterior; y lo harán con toda la eficacia que estuviere a su alcance": Annexes, Vol 2, Annex 7(d).

[241] Annexes, Vol 2, Annex 21, 222 (emphasis added). Original Text: "Costa Rica tiene derecho indiscutido a la margen derecha del río; al suelo colocado dentro de sus límites jurisdiccionales; posee el condominio en los puertos de San Juan del Norte y en la Bahía de Salinas, el derecho contractual de perpetua navegación en el río, empezando desde tres millas abajo del Castillo Viejo, comprensivo de la amplia facultad de tránsito y de comercio, y que impone a Nicaragua el deber de no entrabar esa navegación, y el de tener, por el contrario, expedito el curso del río; los de atracar en sus dos riberas en toda la zona en que la navegación es común; *y los que conciernen a su guarda y defensa 'con toda la eficacia que estuviere a su alcance'*."

4.100. In order to defend the Bay of San Juan del Norte, which is common to both States, Costa Rica is entitled to navigate the lower part of the San Juan with the vessels and personnel necessary to perform that duty. This is practically the only means for Costa Rica to defend the Bay. The Bay is now effectively closed to the ocean and the only way to access the condominium is by police vessels navigating the lower part of the San Juan.

4.101. The safeguarding ("*guarda*") of the San Juan in the stretch where Costa Rica is a co-riparian also requires navigation. This activity is performed by police posts located in the region and by public vessels that supply them. According to the 1852 *Dictionary of the Spanish Academy* the relevant meanings of the term "*guarda*" corresponds to:

> "com. La persona que tiene á su cargo y cuidado la conservación de alguna cosa. Custos. // f. La acción de guardar, conservar ó defender. Custodia// Observancia y cumplimiento de algún mandato, ley ó estatuto. Observantia."[243]

Clearly, "*guarda*" is employed in article IV of the 1858 Treaty of Limits in the sense of custody, i.e. "the action of safeguard, keeping or defence".

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[242] See Acting Nicaraguan Foreign Minister, Carlos Roberto Gurdián, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/98/02638, 28 August 1998: Annexes, Vol 3, Annex 51.

[243] La Academia Española, *Diccionario de la lengua castellana por la Academia Española* (10th edn, Madrid: Imprenta Nacional, 1852), 357. English translation by Costa Rica: "com. The person who has under its care and safekeeping the preservation of something. Custos. // f. The action of safekeeping, conserving or defending. Custody // Observance and fulfillment of a mandate, law or statute. Observantia."

4.102. The main threats that both Nicaragua and Costa Rica faced during the 19th century came from the Caribbean through the San Juan. Plans for the construction of the inter-oceanic canal and the consequent increase in activity in the border region of the San Juan required both countries to undertake the duties expressed in article IV of the Treaty of Limits. During the 20th century, the obligation to safeguard the San Juan was understood—together with actions against trafficking and smuggling—as the obligation to counter other threats to the security of both countries, such as the illegal passage of insurgents or of weapons from one country to the other. This obligation was of particular importance in the context of the events of 1948 and 1955, when there was tension between both countries relating to the activity of insurgent groups operating across borders. As a result, the parties concluded the Treaty of Amity of 21 February 1949 and the Agreement pursuant to Article IV of that Treaty of 9 January 1956.

4.103. Article 1 of the 1956 Agreement[244] commits both Nicaragua and Costa Rica to facilitate and expedite transit on the San Juan within the terms of the 1858 Treaty of Limits and its interpretation in the Cleveland Award. In article 2 both countries specifically undertake to organize the surveillance of their common border as a means to prevent weapons or armed groups from illegally entering each other's territory. In the case of Costa Rica, this task could only be performed through navigation on the San Juan with service arms or through police posts along the Costa Rican bank, which in turn would also imply armed police navigation for purposes of re-supply and relief of personnel.

4.104. Until 14 July 1998 the general trend was one of collaboration between Nicaraguan Armed Forces and Costa Rican Police in order to perform the tasks of safeguarding and defending the River. An example is the Joint Communiqué issued by the Commander in Chief and the Chief of the National Police of Nicaragua and the Minister of Public Security and the Colonel of the Police Force of Costa Rica dated 8 September 1995 (the Cuadra-Castro Agreement), by which it was agreed that:

> "FIRST: In the interests of strengthening the National Security, sovereignty and independence of our countries, the Nicaraguan Army and the Costa Rican Police Force

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[244] Annexes, Vol 2, Annex 24.

will coordinate, as of this date, the operational plans that involve our authorities and allow for the necessary development of joint, parallel patrolling at the border of both countries, thereby joining forces in the battle against the illegal trafficking of persons, vehicles, contraband of any nature and joint operations, following the exchange of information and planning carried out by both parties.

SECOND: As of this moment, the chiefs of the border units of both countries will coordinate and cooperate more closely in planning and carrying out joint parallel patrolling along our countries' common border, exchanging operative information of the common entities involved, with respect to all activities affecting the stability of the terrestrial and aerial border zone related to drug trafficking, arms trafficking, smuggling, rustling, naval piracy, illegal trafficking of persons and the presence and/or passage of criminal gangs."[245]

4.105. Costa Rica's navigation on the San Juan with public vessels carrying police personnel with its arms and ammunition took place both before and after this arrangement, without any Nicaraguan opposition, until 14 July 1998, when the first serious violation of this right was committed. A register of Costa Rica's police navigation shows that between August and December 1994 there were 33 return journeys on the River to Barra del Colorado, 107 during 1995, 126 in 1997 and five in June 1998. Registers also show that Costa Rica's police navigated the San Juan in the direction of Boca San Carlos twice in February 1995, 18 times in 1996, 40 times in 1997 and 23 times between January and June 1998.[246]

4.106. To sum up, the tasks of custody and safeguarding of the San Juan on those parts where the navigation is common to both countries, as well as the contribution to defence of the River and the common bay of San Juan del Norte, can only be carried out by Costa Rica through navigation on the San Juan. Its right to do so was recognised in the Cleveland Award, the 1916 Judgment of the Central American Court of Justice, the 1956 Agreement, the 1995 Cuadra-Castro Agreement, the 1998 Cuadra-Lizano Joint Communiqué and in the conduct of both parties.

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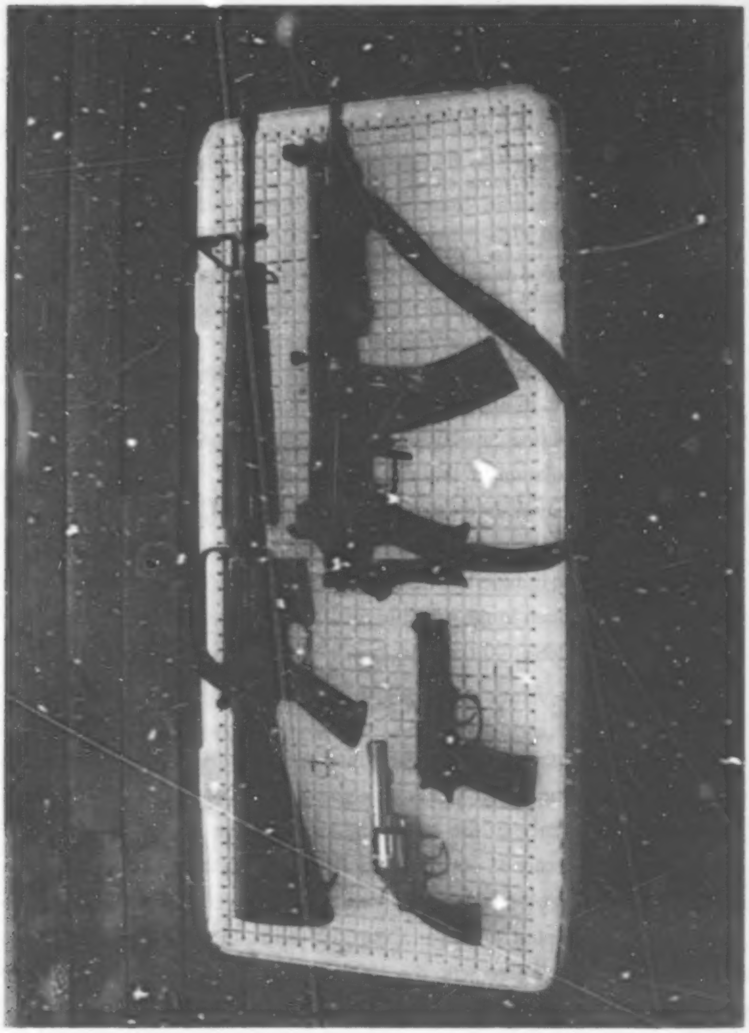
[245] Annexes, Vol 2, Annex 27.

[246] See First Commandant, Mayor Hugo Espinoza, Sarapiqui Atlantic Command, to General Director of the Border Police, Colonel Max Cayetano Vega, Note 3054-98, P.F.S., 18 December 1998: Annexes, Vol 6, Annex 227. It may be noted that before 1994 there appear to have been no log books recording navigation: the practice of keeping log books recording navigation seemingly only started in 1994.



Service arms carried by Costa Rican police agents navigating the San Juan for the purposes of re-supply of Costa Rican police posts in the San Juan region.

F. Re-supply of and transport of personnel to and from border posts

4.107 The rights and obligations to protect commerce, to safeguard the River, and to defend it as well as the common bay of San Juan del Norte, have as a corollary the right to use the River for re-supply and relief of personnel in border posts charged with these duties. Nicaragua acknowledged this through the agreement signed by the Nicaraguan Minister of Defence in Managua on 30 July 1998.

4.108. Costa Rica has the right and the obligation to maintain border posts along its bank of the San Juan. This obligation translates into the right of the Costa Rican police to use the River as a means for relief of personnel and re-supply purposes, since even to this day there are no other practicable means to achieve it by land, due to the geographical configuration of the zone, its climate and conditions and the lack of suitable roads. The right bank of the San Juan constituting the boundary is approximately 150 kilometres in length and in practice the River is the only way that bank can be reached. From the police posts it could take days on foot to reach other villages.

4.109. Since the perpetual right of free navigation includes navigation with public armed vessels, and since the existence of the police posts at the border is a requirement in order to fulfil Costa Rica's obligations concerning the safeguarding and defence of the San Juan and falls within its right to protect its commerce upon it, there exists as a corollary a right to navigate with public vessels carrying personnel, arms and ammunition for the re-supply and relief of personnel in those police posts.

4.110. Navigation on the San Juan with the purpose of re-supply and relief of personnel in border posts on the Costa Rican bank is a purely passive activity. Unlike measures directed at protecting commerce, which could imply active measures, it is confined to the mere transport of the necessary personnel, weapons and ammunition.

4.111. Nicaragua's views with regard to this right have been contradictory. Until the first serious breach of Costa Rica's right on 14 July 1998, Nicaragua had generally respected it. At one point, what Nicaragua disputed was the right of the Costa Rican police personnel to navigate with their arms, not the navigation itself. Nicaraguan President Arnoldo Alemán affirmed that: "Our warning is that there is a right to circulate on the San Juan, but unarmed."[247]

4.112. Subsequently Nicaragua changed its position and denied the existence of any right of navigation for Costa Rican public vessels. President Alemán stated that "the Costa Rican Civil Guard does not need to navigate the San Juan River to supply the surveillance posts in the border with Nicaragua", adding that "[t]he Costa Rican police have facilities in their territory to carry out the supply of their border posts through the land, without entering in the waters of that waterway that belongs to Nicaragua."[248]

4.113. Nicaraguan Foreign Minister Eduardo Montealegre, speaking before the Permanent Council of the Organization of American States on 8 March 2000, likewise stated that:

> "Nicaragua, in honour of the historical ties of friendship and cooperation that exist between the two countries and Governments, has made every effort to cooperate in resolving the alleged need of the Costa Ricans to supply and relieve their border posts on the right bank of the San Juan River via the aforementioned river itself, despite the fact that Costa Rica has easy access to these areas by land and by numerous airplane landing strips."[249]

4.114. These statements were and remain untrue: Costa Rica does not possess all-weather roads or numerous landing strips in the border area.

4.115. This right was exercised by Costa Rica without great difficulty (despite occasional incidents in the period immediately prior to the Pact of Amity of 21 March 1949 and again during the civil war in Nicaragua during the 1980s) until 14 July 1998. Only two weeks later, Nicaragua was willing to revert to the

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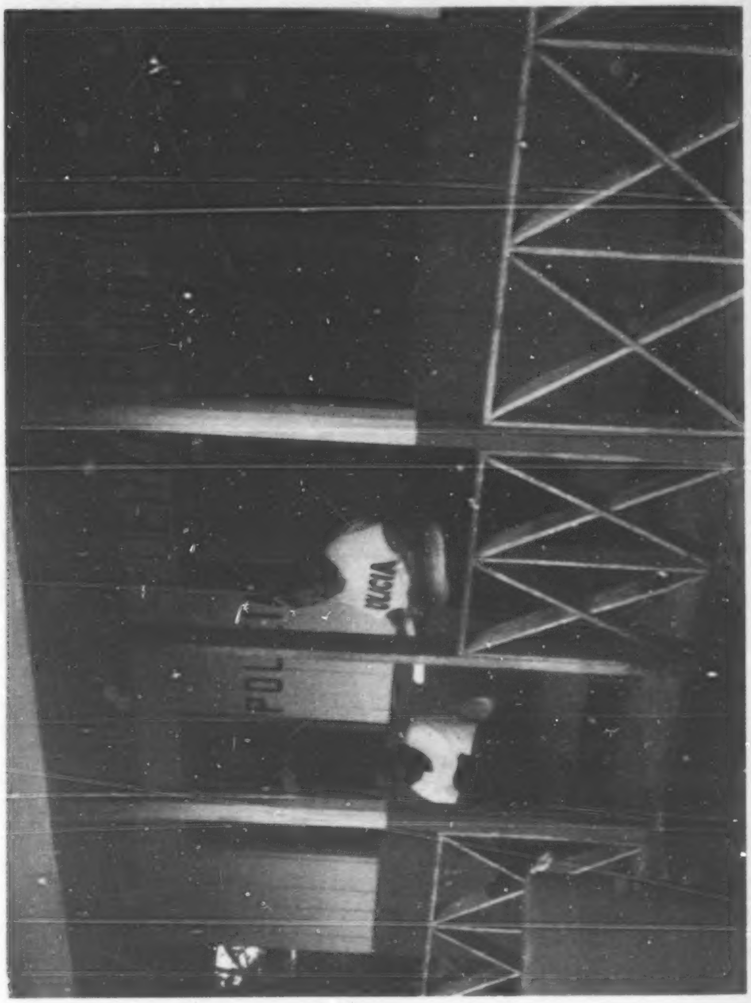
[247] Costa Rican translation, original in text Spanish: "La llamada de atención de parte nuestra es que hay derecho de circulación sobre el Río San Juan, pero no armados" in "Prohibition Lifted", *La Nación*, San José, 17 July 1998: Annexes, Vol 5, Annex 134. See also: "Costa Rican Guard banned from navigating on the San Juan River with arms", *La Tribuna*, Managua, 17 July 1998: Annexes, Vol 5, Annex 133; "Alemán Reiterates Sovereignty over the San Juan River", *La Presna Libre*, San José, 23 July 1998: Annexes, Vol 5, Annex 135; "Costa Rican President suspends visit", *El Nuevo Diario*, Managua, 24 July 1998: Annexes, Vol 5, Annex 137.

[248] "Nicaragua: Alemán suggests to Civil Guard not to navigate the San Juan", *Deutsche Presse Agentur*, Managua, 4 August 1998: Annexes, Vol 5, Annex 146. See also "Permits to Navigate Armed?", *El Nuevo Diario*, Managua, 17 March 2000: Annexes, Vol 5, Annex 160.

[249] Translation by Costa Rica: Annexes, Vol 6, Annex 229.

Costa Rican Coastguard agent and vessel at the Colorado River.



Guard Coast Post Delta Costa Rica near the mouth of the Colorado River, June 2006.

status quo ante, as set out in the Cuadra-Lizano Joint Communiqué of 30 July 1998.[250]

4.116. A good summary of the legal situation was given by Nicaraguan Minister of Defense Jaime Cuadra in the press conference held at the Augusto César Sandino Airport in Managua after the signature of the Cuadra-Lizano Joint Communiqué of 30 July 1998:

> "When faced with questions from Nicaraguan reporters Cuadra denied that the agreement took away sovereignty from the country. 'Costa Rica has always transited on the river and they are not being denied the right to travel on it and no one is taking away the fact that the river belongs to Nicaragua.' "[251]

4.117. In conclusion, the right to navigate the San Juan with official vessels carrying personnel and ammunition for the re-supply and relief of police posts along the Costa Rican bank of the San Juan is a corollary of Costa Rica's rights to protect commerce, to safeguard the river and to contribute to its defence, as well as the defence of the common bay of San Juan del Norte. It was recognised by the Cuadra-Lizano Joint Communiqué on 30 July 1998, which (despite its repudiation by Nicaragua) is a valid and binding agreement.

G. Other related rights

4.118. The navigational rights of Costa Rica recognized by the Treaty of Limits are also associated with other rights which arise from the same treaty or from other international binding instruments and which also have consequences relative to the navigation of the San Juan. These include:

(1) the right to land at any part of the banks of the River where navigation is common;
(2) facilitation of traffic on the River; and
(3) a customary right to fish on its waters for subsistence purposes for residents living on the Costa Rican bank of the San Juan.

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[250] Annexes, Vol 2, Annex 28.

[251] Costa Rican translation, original text in Spanish: "Ante preguntas de reporteros nicaragüenses Cuadre negó que el acuerdo reste soberanía a su país. 'De ninguna manera. Costa Rica siempre ha transitado el río y no se les quita a ellos el derecho de navegarlo y no se nos quita a nosotros que el río pertenece a Nicaragua", in "Border agreement with Nicas", *La Nación*, San José, 31 July 1998: Annexes, Vol 5, Annex 141. See also: "Agreement tends to confirm Nicaraguan sovereignty in the San Juan" *La Prensa*, Managua, 1 August 1998: Annexes, Vol 5, Annex 143.

(1) The right to land at any part of the Nicaraguan bank of the River where navigation is common

4.119. According to article VI of the Treaty of Limits, Costa Rica's perpetual right of free navigation includes the right to land at any part of the Nicaraguan bank of the San Juan where navigation is common. Nicaragua has an equivalent right with regard to the Costa Rican bank, which has always been respected.

4.120. The Central American Court of Justice, in its 1916 Judgment, clearly confirmed that in the zone where navigation is common, Costa Rica has "permanent rights of free navigation … and the right for her vessels to moor at all points along either bank, exempt from the imposition of any charges."[252]

(2) Facilitation of traffic on the River

4.121. In accordance with the Agreement pursuant to Article IV of the 1949 Treaty of Amity, signed on 9 January 1956, Costa Rica and Nicaragua.

> "shall collaborate to the best of their ability in order to carry out those undertakings and activities which require a common effort by both States and are of mutual benefit and, in particular, in order to facilitate and expedite traffic on the Pan American Highway and on the San Juan River within the terms of the Treaty of 15 April 1858 and its interpretation given by arbitration on 22 March 1888, and also to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other."[253]

4.122. This provision is further evidence of the existence of the right of navigation for the purpose of transport of passengers in accordance with the Treaty of Limits and the Cleveland Award and constitutes an additional basis for the improvement of the conditions for its exercise. By virtue of this provision, each party is also obliged (and each has a corresponding right) to make its best efforts and to collaborate with the other in order to facilitate navigation on the San Juan as established in the Treaty of Limits and interpreted by the Cleveland Award and to facilitate transport services provided by enterprises of one party in the territory of the other.

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[252] Annexes, Vol 2, Annex 21, 219.

[253] Costa Rica-Nicaragua, 1956 Agreement, article 1: Annexes, Vol 2, Annex 24.

4.123. Article 1 of the 1956 Agreement puts the Pan American Highway, which traverses Costa Rican and Nicaraguan territory, on the same footing as the San Juan, which is contiguous to the border between the two States. Both have in common the fact of being important means of communication within and between both countries. Clearly, the 1956 Agreement imposes an autonomous obligation of best efforts in order to facilitate transport in the San Juan on both parties, which necessarily include navigation by Costa Rican enterprises of transport.

(3) Customary right to fish in favour of residents of the Costa Rican bank

4.124. In addition, residents on the Costa Rican bank have always fished the waters of the San Juan for purposes of subsistence. The fact that they do so is entirely unsurprising. As this Court said in the *Kasikili/Sedudu Island* case:

> "It is, moreover, not uncommon for the inhabitants of border regions in Africa to traverse such borders for purposes of agriculture and grazing, without raising concern on the part of the authorities on either side of the border."[254]

4.125. The Commission charged with determining the Eritrea/Ethiopia boundary dispute, after having decided that boundaries in rivers should be determined by reference to the location of the main channel, clearly stated that:

> "Regard should be paid to the customary rights of the local people to have access to the river."[255]

4.126. In some cases, customary rights of border populations have been recognized by treaties, including the right to fish on rivers. For instance, article 9 of the Agreement between Great Britain and Belgium of 22 November 1934 concerning water rights on the boundary between Tanganyika and Rwanda-Urundi provides that:

> "Any of the inhabitants of the Tanganyika Territory or of Ruanda-Urundi shall be permitted to navigate any river or stream forming the common boundary and take

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[254] *Kasikili/Sedudu Island (Botswana/Namibia)*, I.C.J. Reports 1999, p. 1094 (para 74).

[255] Eritrea-Ethiopia Boundary Commission, *Decision Regarding Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia*, 13 April 2002, 41 ILM 1057, 1116 (para 7.3).

therefrom fish and aquatic plants and water for domestic purposes and for any purposes confirming with their customary rights."[256]

4.127. Customary rights have also been expressly recognized in cases in which the boundary delimitation entirely left a river to one of the neighbours. The Protocol concluded between Great Britain and France on 1 July 1912 provides in article 8:

> "In the part of the Moa included between cairns XV and XVI the river and the islands belong entirely to France. The inhabitants of the two banks have, however, equal rights of fishing in this part."[257]

4.128. The customary right of fishing of the residents of the Costa Rican bank of the San Juan consists of catching fish from the bank and from boats, using in some cases nets of reduced dimensions. This activity is performed for subsistence purposes, essentially for family consumption. It has been carried on for as long as the region has been inhabited. Indeed, this practice entirely corresponds with the first regime of the San Juan ever applied. As mentioned, the Royal Ordinance of 29 November 1540 determined that fishing on the River would be common.[258] The right of fishing of the residents of the Costa Rican bank of the San Juan for subsistence purposes has been respected by Nicaragua until very recently, when—after the institution of these proceedings—it began to prevent the riparians from engaging in it.

H. Conclusions

4.129. To summarise, the following conclusions may be drawn:

(1) Costa Rica has a conventional perpetual right of free navigation over the portion of the San Juan where it is a riparian State, and is entitled to exercise this right without restrictions or interference.

(2) This right includes in particular the right of navigation for the purposes of commerce, its vessels having the power to land indiscriminately on

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[256] Agreement regarding Water Rights on the Boundary between Tanganyika and Ruanda-Urundi, London, 22 November 1934, 190 LNTS 106.

[257] 9 Martens NRG (3rd) 805.

[258] See paragraph 2.08.

the Nicaraguan side of the River where the navigation is common, without being subject to charges of any kind or duties, unless levied by mutual consent of both Governments. It includes:

(i) the right of free navigation for communication;
(ii) the right of free navigation for transportation of goods; and
(iii) the right of free navigation for the transportation of persons, including tourism

(3) This right also includes the right of navigation with the following purposes:

(i) protection of commerce and of revenue control;
(ii) safeguarding or custody of the San Juan;
(iii) defence of the common bay of San Juan del Norte; and
(iv) as a corollary of these purposes, re-supply and personnel relief at border posts.

(4) Residents of the Costa Rican bank of the San Juan are entitled to perform their customary right to fish, both from that bank and within the waters of the San Juan along that bank, for subsistence purposes.

(5) Costa Rica is also entitled to see Nicaragua make its best efforts and collaborate with Costa Rica in order to facilitate the traffic on the San Juan to facilitate transport services provided by enterprises of Costa Rica in the territory of Nicaragua, including the waters of the San Juan.

Chapter 5

Nicaragua's breaches of Costa Rica's rights

A. Introduction

5.01. It was in the context of the Nicaraguan war (1980-1989) that Nicaragua began to challenge Costa Rica's navigational and related rights on the San Juan. Initially these challenges were sought to be justified as temporary measures based on national security requirements. In 1994, however, Nicaragua started shifting its position, reaching a point where today it effectively denies most of Costa Rica's rights.

5.02. In this Chapter, Costa Rica will particularise the different breaches committed by Nicaragua of specific aspects of the navigational and related rights of the River appertaining to Costa Rica.

5.03. The present Chapter is in four main parts.

Section B deals with breaches of Costa Rica's rights of perpetual and free navigation. *Subsection (1)* deals with Nicaragua's conduct in requiring Costa Rican vessels to land on the Nicaraguan bank of the River and to pay for a so-called "departure clearance certificate" (*derecho de zarpe*). *Subsection (2)* discusses Nicaragua's conduct in imposing other charges on Costa Rican vessels navigating the River. *Subsection (3)* addresses Nicaragua's conduct in requiring Costa Ricans and foreigners travelling on Costa Rican vessels to carry a passport and to obtain a Nicaraguan visa. *Subsection (4)* discusses Nicaragua's conduct in imposing timetables on Costa Rican navigation on the River. *Subsection (5)* turns to the searches conducted by Nicaraguan officials of Costa Ricans and foreigners travelling on Costa Rican vessels and of the vessels themselves. *Subsection (6)* addresses Nicaragua's conduct in requiring Costa Rican vessels to carry the Nicaraguan flag whilst navigating the River.

Section C turns to breaches of Costa Rica's right of navigation for the purposes of commerce (*con objetos de comercio*). *Subsection (1)* addresses breaches regarding communication. *Subsection (2)* discusses breaches concerning the transportation of goods and persons, including tourism.

Section D deals with breaches of Costa Rica's right of protection of commerce, its right and obligation to safeguard and defend the River and the common bay of San Juan del Norte and its right of navigation of its agents for purposes of supply and relief of the police posts along the Costa Rican bank of the River.

Section E deals with breaches of other related rights of Costa Rica.

B. Breaches of Costa Rica's rights of perpetual and free navigation

5.04. In Chapter 4, Costa Rica set out the scope of its rights of perpetual and free navigation. These are categorical rights deriving in the first place from article VI of the Treaty of Limits, which in terms grants Costa Rica an unrestricted right of navigation for the purposes of commerce, including the most ample faculty of transit and commerce.

5.05. Despite the clear wording of the Treaty of Limits and its authoritative interpretation by the Cleveland Award and later by the Central American Court of Justice, in the period since 1994 Nicaragua has engaged in a series of actions which amount to a serious denial of Costa Rica's rights.

(1) The obligation to land at the Nicaraguan bank and payment for a "departure clearance certificate"

5.06. Pursuant to article VI of the Treaty of Limits the vessels of Costa Rica and Nicaragua have the right to land on either side of the River. Nowhere is it stipulated that Costa Rican vessels have an *obligation* to land on the Nicaraguan bank and report to the Nicaraguan authorities.

5.07. Before the civil war in Nicaragua started, the practice had been that Costa Rican boatmen who needed to navigate the San Juan to transit from one part of Costa Rican territory to another, e.g. from Barra del Colorado to Puerto Viejo de Sarapiquí or vice versa, would obtain a departure clearance certificate issued by Costa Rican authorities (either in Barra del Colorado or Puerto Viejo de Sarapiquí), and would show it on request to the Nicaraguan authorities when entering the San Juan.[259]

5.08. In the early 1980s Nicaraguan army authorities started forcing Costa Rican vessels to stop at Nicaraguan posts along the River and demanding payment for their own "departure clearance certificate" every time the River was used for transit, even when the Costa Rican vessels were travelling from one part of Costa Rican territory to another. According to several witnesses, at that time the Nicaraguan Army members justified this charge as a contribution towards the purchase of food and supplies for their post.[260]

5.09. On 6 November 1980, in the context of the incident two days earlier when Nicaraguan Army officials at Boca de Sarapiquí shot at a Costa Rican vessel transporting personnel of the Ministry of Health, the Sandinista Government announced that, to avoid conflict, every time Costa Ricans wished to navigate the San Juan entering by Boca de Sarapiquí, they should report to the Nicaraguan authorities.[261]

5.10. At that time, the Nicaraguan Foreign Minister was reported as stating:

> "What happens – he said – is that Costa Ricans have a right of navigation on the San Juan according to the Cañas-Jerez Treaty. But because in that area there are counterrevolutionary bands, we have asked the Costa Ricans to notify when they are going to cross the San Juan". He added that: "it is not that we want to ignore their right to navigate the river, but simply that they notify us, as the Hondurans do when they navigate on the Coco River, so as to avoid accidents like the one of the previous Tuesday."[262]

5.11. However, on 4 July 1982, Nicaraguan Army officials at the border post at the mouth of the Sarapiquí River verbally informed boatmen from Swiss Travel Services, a Costa Rican tour operator, about certain "new conditions" under which Costa Rican boatmen and passengers would be allowed to navigate the San Juan. As reported by Swiss Travel Services to Costa Rica's Foreign Ministry, the new conditions faced by their boatmen were as follows:

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[259] As explained in Affidavit of Wilton Hodgson Hodgson, 1 February 2006: Annexes, Vol 4, Annex 96; and Affidavit of Rubén Lao Hernández, 17 February 2006: Annexes, Vol 4, Annex 103.

[260] Affidavits of Windel Hodgson Hodgson, 28 January 2006: Annexes, Vol 4, Annex 93, and Armando Perla Perez, 28 January 2006: Annexes, Vol 4, Annex 92.

[261] "Nicaragua conditions navigation on the waters of the San Juan River", *La Nación*, San José, 8 November 1980: Annexes, Vol 5, Annex 111.

[262] Ibid.

> "1. They must pay the departure clearance certificate at Barra del Colorado at the Rural Assistance Guard.
>
> 2. Bring the departure clearance certificate to the border post, and exchange it for a new one that they prepare with a cost of ¢10,oo since they argue that the departure clearance certificate issued by the Costa Rican authorities is not valid when navigating the San Juan River.
>
> 3. To this effect, the boatman must climb up to the post, which is located on top of a hill, under the rain, and with mud, etc., taking approximately 20 minutes going up and 20 going down. In the meanwhile, the customers wait sitting in the boat…"[263]

5.12. This situation was protested by Costa Rica on 16 July 1982.[264] Nicaragua responded on 2 August 1982, saying that:

> "Based on this eminent dominion that Nicaragua exercises over that part of its national territory, our country has the right to establish regulations over said river, which in no way are contrary to the right of free navigation that Costa Rica possesses."[265]

5.13. The Costa Rican Foreign Minister responded on 19 August 1982, saying that the Government of Costa Rica could not accept

> "the thesis of the Government of Nicaragua that this country has the right 'to establish regulations over said river', in detriment of the right of Costa Rica, nor the thesis that Nicaragua has 'the obligation' to 'exercise acts of sovereignty and jurisdiction over that part of its national territory and over the vessels that navigate on it', in detriment of Costa Rica's right. This interpretation, which the Government of Costa Rica rejects, contradicts and limits what by virtue of the Treaty does not admit contradiction or limitation."[266]

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[263] Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 13 July 1982: Annexes, Vol 6, Annex 225.

[264] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 126-82, 16 July 1982: Annexes, Vol 3, Annex 42.

[265] Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, to Costa Rican Foreign Minister, Fernando Volio Jiménez, Note No. E.N. 789/82, 2 August 1982: Annexes, Vol 3, Annex 44.

[266] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, Note No. DM-189-82, 19 August 1982: Annexes, Vol 3, Annex 45.

5.14. While asking Nicaragua to cease the violations to Costa Rica's navigational rights, the note also protested the maintenance and increase in the charge for a departure clearance certificate that apparently had taken place recently: this constituted "a tax that is excluded by article six of the Cañas-Jerez Treaty".[267]

5.15. The Nicaraguan Ambassador in Costa Rica responded on 6 September 1982 stating that:

> "…the San Juan River is a river absolutely Nicaraguan, and on the base of this unquestionable reality Nicaragua has exercised, exercises, and will continue to exercise all the attributes of its sovereignty, without any detriment to Costa Rica's right to free navigation, that will continue to be respected by Nicaragua… Free navigation to the degree that such right is not used to harm the national interests, alter the order and peace of the nation, attempt against Nicaragua's territorial integrity, or to disrespect the rights that international norms recognize to the sovereign States."[268]

5.16. However, Nicaragua did acknowledge that the departure clearance certificate was being improperly imposed. The note said:

> "Finally, regarding the purported taxes that according to Your Excellency are being charged by our authorities in the zone, proper measures have already been adopted to prohibit that practice, if it were true they were being demanded, in accordance with that stipulated in the 1858 Treaty."[269]

5.17. In the period after the end of the civil war, things seem to have returned to normal. Thus Mr Ruben Lao Hernández, a boatman on the River for more than 60 years, states that

> "After the end of the Nicaraguan counterrevolution, around the year nineteen eighty eight, navigation along the San Juan River returned to normal, and he did not encounter any problems navigating, even at night."[270]

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[267] Ibid.

[268] Nicaraguan Ambassador to Costa Rica, Rogelio Ramiréz Mercado, to Costa Rican Foreign Minister, Fernando Volio Jiménez, Note No. E.N. 865/82, 6 September 1982: Annexes, Vol 3, Annex 46.

[269] Ibid.

[270] Affidavit of Ruben Lao Hernández, 17 February 2006: Annexes, Vol 4, Annex 102.

5.18. On the other hand, it appears that on occasion payments were demanded. Thus Mr Armando Perla Pérez, a boat captain resident in Barra del Colorado who has navigated the San Juan since the late 1970s, states:

> "...when the war was over, navigation returned back to normal and … they could navigate without restrictions and without making payments for tourist or immigration purposes, but … they were sometimes charged a departure clearance certificate of one thousand colones."[271]

5.19. In March 2001 complaints were made by Costa Ricans living in the San Juan area that they were being charged US$25 for permission to travel on the River. In consequence, the Costa Rican Deputy Minister of Foreign Affairs sent a note to the Nicaraguan Minister of Foreign Affairs on 18 April 2001, protesting the charge. The note stated:

> "I address Your Excellency on the matter of a fee of US$25.00 (twenty five US dollars) that the Nicaraguan authorities charged Costa Ricans travelling along the San Juan River during the past month of March. This illegal charge took place when Costa Ricans were navigating the San Juan River in vessels carrying the national flag. In this respect, we are enclosing one of the receipts issued by the Nicaraguan authorities, which proves the charge of the above-mentioned fee.
>
> This fact constitutes a flagrant violation of the Republic of Costa Rica's rights of free navigation on the San Juan River that the Cañas-Jerez Treaty of 1858, the Cleveland Award of 1888 and the Central American Court judgement of 1916 grant the Republic of Costa Rica."[272]

Nicaragua did not respond to this note.

5.20. In a notarial deed of 5 May 2001,[273] it is recorded how a Costa Rican boatman was charged the amount of US$25 at the Boca Sarapiquí Post when entering the San Juan on the way from Puerto Viejo de Sarapiquí to Barra del Colorado, despite the fact that the purpose of his journey was commercial.[274]

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[271] Affidavit of Armando Perla Pérez, 28 January 2006: Annexes, Vol 4, Annex 92.

[272] Costa Rican Deputy Foreign Minister, Elayne Whyte, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DVM-111-01, 18 April 2001: Annexes, Vol 3, Annex 70.

[273] Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83.

[274] "Having been asked about our destination and the purpose of the trip, we said we were going to Barra del Colorado for commercial purposes because we were looking for some property to buy.... After we concluded the payment to the immigration officer, a young man who identified himself as Sergeant Manuel Trejos of the Nicaraguan Army asked Mr. Lao details about the vessel and about our destination. This information was written on a document called 'Departure Clearance Certificate', which is issued by the Nicaraguan Army and which was handed to Mr.

He had to report at the next Nicaraguan Post located at Delta Colorado and present the departure clearance certificate in order to be allowed to continue his journey.[275] On his return to Puerto Viejo de Sarapiquí, he was once again charged the amount of US$25 for the departure clearance certificate when he passed the Nicaraguan Post at Delta Colorado.[276]

5.21. On 8 May 2001 Costa Rican journalists navigating the San Juan on their way from Puerto Viejo de Sarapiquí to the Colorado River reported that the Nicaraguan Army was charging US$25 to each Costa Rican vessel every time it entered the San Juan. According to the press report, the boatman who was transporting them was charged US$25 at the Nicaraguan Army post at Boca Sarapiquí when entering the San Juan on the way to Delta Colorado (in Costa Rica), and he was charged the same amount again on the return journey.[277]

5.22. On 9 May 2001, Costa Rica again protested the charge of the departure clearance certificate, together with other related violations of Costa Rica's navigational rights.[278]

Lao. The consecutive number of that document was zero three zero five. Once the document was filled out, Mr. Lao paid a fee of twenty-five American dollars. Upon payment, the Nicaraguan Army issued an official cash receipt numbered zero three hundred and five": Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83. For a copy of this Departure Clearance Certificate and the receipt thereof see Annexes, Vol 6, Annex 241 (a).

[275] "We arrived at the post of the Nicaraguan Army, called El Delta Post, at the twelve hours and thirty minutes. There Mr. Lao got off the vessel and climbed some wood logs up to the Post booth, where an officer of the Nicaraguan Army asked him to show the 'Departure Clearance Certificate', to which Mr. Lao complied. After the certificate was checked, he was authorized to enter the mouth of the Colorado River in Costa Rican territory. Once on the Colorado River, we stopped at the Costa Rican Border Police post, known as Delta Costa Rica Post, with the purpose of looking at the property of the area and requesting information about the sale of property in Costa Rican territory": Deed of 5 May 2001: Annexes, Vol 4, Annex 83.

[276] "At thirteen hours and thirty minutes, we left the mouth of the Colorado River to begin our return toward Puerto Viejo de Sarapiquí. There we were also required to stop at the so-called El Delta Post of the Nicaraguan Army, and we had to request authorization of the Army officers to be able to continue our course on the San Juan River. After asking Mr Lao information about the vessel and our final destination, and after we replied that it was Puerto Viejo de Sarapiqui, the officer wrote the information on the so-called 'Departure Clearance Certificate', and instructed Mr. Lao to pay again the amount of twenty-five American dollars in order to authorize the navigation. Mr. Lao paid the above amount and the aforementioned "Departure Clearance Certificate" was handed to him. This document was numbered zero four zero four and it indicated the payment of the twenty-five American dollars. Mr. Lao was not given any official cash receipt by the Nicaraguan Army as the officer said that they had no receipts." Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83. For a copy of this Departure Clearance Certificate see Annexes, Vol 6, Annex 241(b).

[277] "Nicas insist on charging", *La Nación*, San José, 8 May 2001: Annexes, Vol 5, Annex 169.

[278] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-207-2001, 9 May 2001: Annexes, Vol 3, Annex 71, emphasis added.

5.23. Nicaragua responded Costa Rica's note in the following terms:

> "With regard to the motive for your protest, I would like to inform you that the sum of US$25.00 being charged is, contrary to that expressed by Your Excellency, not for navigating the San Juan River, nor does it constitute any type of tax, but is, rather, the amount charged for providing the departure clearance certificate service that both Nicaraguan and foreign vessels in any Nicaraguan port, including those located in the said river, are charged when travelling to another State.
>
> I have the honour to inform you, dear Minister, that, in the interests of strengthening the fraternal ties of friendship and cooperation that exist between our countries and Governments, the President of the Republic has given instructions to extend the departure clearance certificate to Costa Rican vessels for free in Boca de Sarapiquí and the Delta of the San Juan River, as an act of courtesy, with the exception of vessels related to tourist activities or when they use the Port of San Juan del Norte. The vessels that receive the complimentary departure clearance certificate will only be required to report at the Nicaraguan Army's Military Control Posts on the lower course of the San Juan River."[279]

5.24. As can be seen, Nicaragua attempted to justify the charging of the departure clearance certificate not as a tax or a payment for navigating the San Juan but rather as an "amount charged for providing the departure clearance certificate service that both Nicaraguan and foreign vessels in any Nicaraguan port, including those located in the said river, are charged when travelling to another State". The charge was justified as a payment for providing a "departure clearance certificate service" which does not exist since there are no port facilities on the San Juan. It is a mere consequence of Nicaragua forcing Costa Rican vessels to stop at its army posts along the river. The charge clearly contradicts article VI of the Treaty of Limits.

5.25. With these considerations in mind, on 26 September 2001 the Costa Rican Foreign Minister responded in the following terms:

> "Secondly, the difference should be established between Costa Rican vessels heading specifically for Nicaraguan territory and Costa Rican vessels that have to call at a Nicaraguan port in order to comply with the requirement imposed by the Nicaraguan

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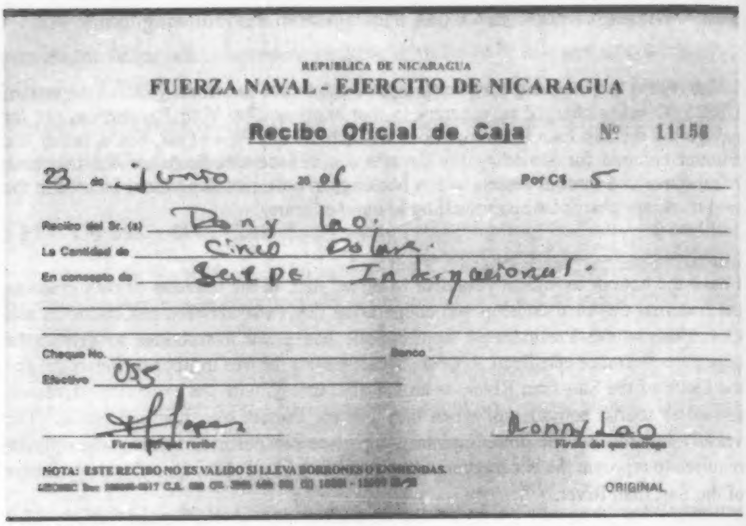
[279] Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/DM-JI/0818/08/01, 3 August 2001: Annexes, Vol 3, Annex 72.



REPUBLICA DE NICARAGUA

FUERZA NAVAL - EJERCITO DE NICARAGUA

Recibo Oficial de Caja Nº 11156

23 de Junio 20 06 Por C$ 5

Recibo del Sr. (a) Rony Lao.

La Cantidad de Cinco Dolare.

En concepto de Zarpe Internacional.

Cheque No. Banco

Efectivo US$

Firma del que recibe

Ronny Lao

Firma del que entrega

NOTA: ESTE RECIBO NO ES VALIDO SI LLEVA BORRONES O ENMIENDAS.

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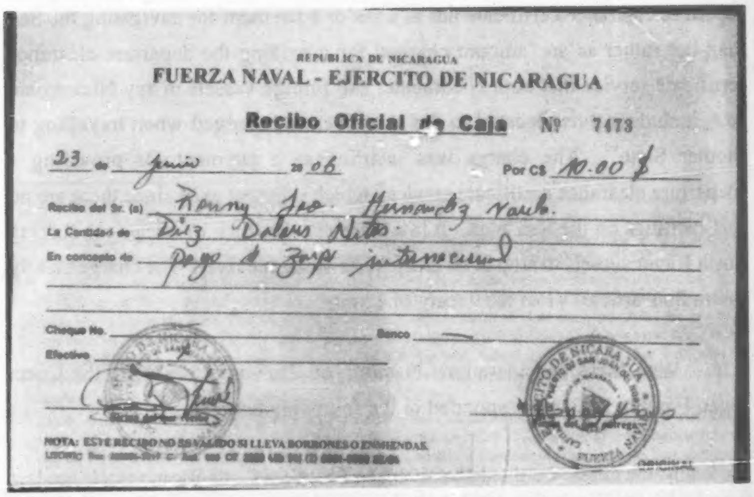

REPUBLICA DE NICARAGUA

FUERZA NAVAL - EJERCITO DE NICARAGUA

Recibo Oficial de Caja Nº 7473

23 de junio 20 06 Por C$ 10.00 $

Recibo del Sr. (a) Ronny Lao Hernandez [illegible].

La Cantidad de Diez Dolares Netos.

En concepto de Pago de Zarpe internacional

Cheque No. Banco —

Efectivo

Firma del que recibe

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NOTA: ESTE RECIBO NO ES VALIDO SI LLEVA BORRONES O ENMIENDAS.

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> authorities of reporting to them. In the latter case, the departure clearance certificate is illogical, since these vessels are travelling between points in Costa Rican territory. In short, the Nicaraguan authorities deliberately impose a condition to report, which represents an economic advantage. Such measure totally violates the corresponding provisions of the Cañas-Jerez Treaty.
>
> Thirdly, it is pleasing to hear the Honourable Government of Nicaragua's declarations of good will. We hope that this good will shall contribute to correctly interpreting the provisions of the Cañas-Jerez Treaty, that, in its Article 6, at the part that corresponds, establishes: '…The vessels of both countries shall have the power to land indiscriminately on either side of the river at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments'. This aspect is related to that of the previous point in the sense that one may pose the question: 'Which is the service rendered corresponding to the departure clearance certificate?'"[280]

5.26. Despite Costa Rica's protests, Nicaragua has maintained the requirement of a departure clearance certificate for all Costa Rican vessels navigating the San Juan, regardless of whether they are transiting from one part of Costa Rican territory to another or whether the vessel's final destination is within Nicaragua. It is charged together with the immigration fees that are described in the next section.[281]

5.27. The cost of the departure clearance certificate has varied with time. For example, in April 2000 a charge of 2000 colones for each Costa Rican vessel was announced.[282] In May 2001 it was reported and proven that the charge was of US$25,[283] while in May 2002 the cost of the departure clearance certificate was reported by the press to be 1000 colones.[284] By 2003, the press reported that the cost was raised from 2000 to 4000 colones (approximately US$4 to US$8).[285] More recently and more consistently, it has been fixed at US$5.[286]

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[280] Costa Rican Foreign Minister, Roberto Rojas, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-355-2001, 26 September 2001: Annexes, Vol 3, Annex 73.

[281] "Nicaraguan Government charges 1500 colones to each Costa Rican who navigates in the San Juan for a short while", *Diario La Extra*, San José, 11 April 2000: Annexes, Vol 5, Annex 162. See also "Nicas insist on charging", *La Nación*, San José, 8 May 2001: Annexes, Vol 5, Annex 169; "Neighbours of the San Juan River feel defenceless", *La Nación*, San José, 22 June 2002: Annexes, Vol 5, Annex 177; "A river of calm and fees", *La Nación*, San José, 14 May 2003: Annexes, Vol 5, Annex 179; and "Costa Rican vessels will bear the Nicaraguan flag", *La Prensa*, Managua, 17 October 2005: Annexes, Vol 5, Annex 186.

[282] "Nicaraguan Government charges 1500 colones to each Costa Rican who navigates in the San Juan for a short while", *Diario La Extra*, San José, 11 April 2000: Annexes, Vol 5, Annex 162.

[283] See the Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83; copies of receipts in Annexes, Vol 6, Annexes 241 (a) and (b); and "Nicas insist on charging", *La Nación*, San José, 8 May 2001: Annexes, Vol 5, Annex 169.

[284] "Neighbours of the San Juan River feel defenceless", *La Nación*, San José, 22 June 2002: Annexes, Vol 5, Annex 177.

5.28. Additionally, not only has the cost of the departure clearance certificate varied over time, but apparently it varies from post to post: currently it may be US$5 or $10. As can be seen from the two receipts (**shown opposite** page 101) given by Nicaraguan Army Officers dated 23 June 2006, US$5 was charged as a departure clearance certificate at the Army Post located in Boca Sarapiquí, but at the Army post of San Juan del Norte the charge imposed was US$10.[287]

(2) Other charges

5.29. Notwithstanding article VI of the Treaty of Limits, Nicaragua has argued that, because Costa Rican vessels navigating the San Juan in transit from one part of Costa Rica to another are entering Nicaraguan territory, all passengers are required to pay immigration charges.

5.30. In the context of the incident which occurred on the San Juan on 4 November 1980,[288] Costa Rican residents of the border region reported that Nicaraguan officials had began demanding a payment of ¢7 (seven colones, the Costa Rican currency, approximately US$1 at that time) for each quintal (i.e. 100 pounds) of beans and corn being transported by Costa Rican vessels on the San Juan. They also reported that Nicaraguan Army officials were forcing them to land on the Nicaraguan bank to pay that fee.[289] The Nicaraguan Foreign Minister stated that he was not aware of such charges[290], and they were suspended immediately.

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[285] "A river of calm and fees", *La Nación*, San José, 14 May 2003: Annexes, Vol 5, Annex 179.

[286] "Costa Rican vessels will bear the Nicaraguan flag", *La Prensa*, Managua, 17 October 2005: Annexes, Vol 5, Annex 186.

[287] See Annexes, Vol 6, Annexes 241(c) and (d).

[288] Nicaraguan Army officials shot at a Costa Rican vessel transporting personnel of the Ministry of Health (see paragraph 5.95).

[289] "Sandinista guards attack Costa Ricans", *La Nación*, San José, 6 November 1980: Annexes, Vol 5, Annex 110.

[290] According to the Costa Rican press report: "…Foreign Minister D'Escoto said in our country that he was not aware that the Nicaraguan southern border authorities where charging ¢7 per quintal of corn or beans that leave Costa Rica through the San Juan River and that they (the Costa Ricans) are forced to go to the Nicaraguan border to cancel that fee". See "Foreign Affairs Minister says that the Cañas-Jerez Treaty is unquestionable", *La Nación*, 9 November 1980: Annexes, Vol 5, Annex 112.

5.31. This remained the situation until early March 1994, when Nicaragua unilaterally announced that immigration controls would be imposed on Costa Rican tourism transiting on the San Juan, in addition to the charge of US$5 for a tourism card.[291]

5.32. On 6 March 1994, following an incident in which a Costa Rican government official and his companions were shot at by the Nicaraguan Army, it was reported that US$5 was being charged indiscriminately to Costa Ricans for navigating the San Juan.[292]

5.33. The Costa Rican Foreign Minister discussed both the shooting incident and the charge of US$5 for navigation on the River with his Nicaraguan counterpart. The Nicaraguan Minister of Foreign Affairs informed him that "the fee of the US$5 is only in force on the Nicaraguan bank."[293] According to a Nicaraguan press note, the charge of US$5 was only charged to the tourists when they navigated beyond the area where Costa Rica has free navigation.[294] However, in practice this distinction has not been observed and the tourist card was charged to all persons travelling in Costa Rican vessels on the River.[295]

5.34. A team of journalists visited the area to verify the situation and reported that, in effect, all persons navigating on Costa Rican vessels were being forced to dock on the Nicaraguan bank and were charged US$5. As they reported it, failure to do so entailed security risks, since the Nicaraguan army officials carried AK-47 guns.[296]

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[291] "Conflict with the Nicaraguans due to tourism on the San Juan", *La Nación*, San José, 5 March 1994: Annexes, Vol 5, Annex 123.

[292] The Costa Rican Government official and his companions were on a mission to distribute school supplies in Costa Rican schools at Barra del Colorado. On their return trip they were shot at in the Delta Colorado area and forced to land on the Nicaraguan bank. See "Ticos were machine-gunned at the San Juan River", *La Nación*, San José, 8 March 1994: Annexes, Vol 5, Annex 124.

[293] Ibid.

[294] "Problem with Ticos solved", *La Prensa*, Managua, 8 March 1994: Annexes, Vol 5, Annex 125.

[295] "Ticos were machine-gunned at the San Juan River", *La Nación*, San José, 8 March 1994: Annexes, Vol 5, Annex 124.

[296] "$5 to navigate on the San Juan River", *La Nación*, San José, 10 March 1994: Annexes, Vol 5, Annex 126.

5.35. The Costa Rican Minister of Foreign Affairs protested to Nicaragua on 15 March 1994, requesting that the "toll that was being charged to Costa Ricans while navigating the San Juan River stop being charged."[297]

5.36. Nicaragua replied to the note of protest, stating:

> "the charge for the Tourist Card is not a transit toll, but a measure of migratory control. In any case, we must remember that Costa Rica's perpetual right of free navigation, in the portion indicated in the Treaty [of Limits] does not include tourism, and much less the free access to Nicaragua's sovereign territory to foreign citizens who travel in Costa Rican vessels that navigate on said River, "for the purpose of transporting tourists", as your own note states."[298]

5.37. The note further added that:

> "The Cañas-Jerez Treaty does not limit in any way the exercise of Nicaragua's Sovereign Rights to establish the necessary migratory and security controls, along and across the whole San Juan... In conformity with these sovereign rights the Government of Nicaragua has established Migratory Control Posts to regulate the payment of the entry visa of citizens of those countries that, according to the Treaties in force, are not exempted from this requirement."[299]

5.38. In this response, although the Nicaraguan Government argued that in its view tourism does not qualify as a commercial activity, it acknowledged that Costa Rican citizens could not be charged for navigating the San Juan. Beginning on 22 March 1994, the Nicaraguan Government modified the measure, so that the tourist card would only be charged to passengers who are not Costa Rican citizens. Costa Rica nevertheless "rejected such measure, since it considered that it violates her right of free navigation in the river with national flag vessels, established in the Cañas-Jerez Treaty of Limits."[300]

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[297] "Costa Rica Demands Nicaraguans to withdraw charge on the San Juan", *La República*, San José, 17 March 1994: Annexes, Vol 5, Annex 128.

[298] Nicaraguan Foreign Minister, Ernesto Leal, to Costa Rican Foreign Minister, Bernd Niehaus Quesada, Note No. 940284, 21 March 1994: Annexes, Vol 3, Annex 48.

[299] Ibid.

[300] "Niehaus rules out arbitration", *La Nación*, San José, 20 April 1994: Annexes, Vol 5, Annex 130. See also "Foreign Ministers will analyze the transit on the San Juan River" *La Nación*, Sen José, 13 April 1994: Annexes, Vol 5, Annex 129.

5.39. Despite its previous statements, Nicaragua started charging Costa Ricans for the US$5 "tourist card". By mid-1999, and in the context of the tension between both States that resulted from Nicaragua's prohibition of Costa Rican police navigation, the Nicaraguan Government ordered that all passengers being transported on Costa Rican vessels be charged ¢1500, approximately US$5 at the time, for navigating the River, together with ¢2000 for the departure clearance certificate for each vessel.[301] This measure was applied both to other foreigners and to Costa Ricans, including those who owned property on Costa Rican territory adjacent to the San Juan and had to use the River to access their property.[302]

5.40. On 8 May 2001 the Costa Rican press reported that Nicaraguan authorities were charging US$5 for every Costa Rican who navigated the San Juan. Those charges were demanded each time the vessels entered the San Juan, both on their way from Puerto Viejo de Sarapiquí to Delta Colorado and on their return journey.[303]

5.41. The charge of US$5 for the tourist card was recorded in a notarial deed on 5 May 2001.[304] The testimony of Mr Norman Scott Chinchilla was that:

> "he himself, who owns property bordering on Nicaragua, is forced to pay the corresponding tourist charge, in spite of not being a tourist himself, which deprives him from freely exercising the commercial and agricultural activities on his property."[305]

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[301] "Nicaraguan Government charges 1500 colones to each Costa Rican who navigates in the San Juan for a short while", *Diario La Extra*, 11 April 2000: Annexes, Vol 5, Annex 162.

[302] "San Juan: Calm and Uneasiness", *La Nación*, San José, 4 July 1999: Annexes, Vol 5, Annex 155.

[303] "Nicas insist on charging", *La Nación*, San José, 8 May 2001: Annexes, Vol 5, Annex 169. See also "An infuriating game", *La Nación*, 9 May 2001: Annexes, Vol 5, Annex 170.

[304] "Once we were on the left margin of the river, we got off the vessel and climbed some wood logs up to the post of the Nicaraguan authorities. Once at the post, we identified ourselves to a gentleman who claimed to be an immigration officer. Having been asked about our destination and the purpose of the trip, we said that we were going to Barra del Colorado for commercial purposes because we were looking for some property to buy. He gave us some immigration forms and asked us to pay the amount of five American dollars, which was a fee established by the Nicaraguan authorities. He also gave us a receipt numbered with the D Series, number two eight four three six three, for the corresponding payment made by Mr. Alvarado and the undersigned, indicating on the receipt that the payment covered "two Tourist Cards". See Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83. For a copy of the receipt of the tourist card charged to the two passengers see: Annexes, Vol 6, Annex 242 (a).

[305] Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83.

5.42. On 9 May 2001 Costa Rica protested the charge for the tourist card, together with other related violations of Costa Rica's navigational rights.[306]

5.43. Nicaragua responded to Costa Rica's note of protest in the following terms:

> "Finally, with regard to the US$5 the migration authorities charge each person entering Nicaraguan territory; allow me to inform you that the latter amount applies to all foreigners entering the country."[307]

5.44. On 26 September 2001 the Costa Rican Foreign Minister responded to the Nicaraguan note of 3 August 2001, insisting that the US$5 charge, as well as the requirement that Costa Rican vessels call at Nicaraguan posts, constituted violations of Costa Rica's right to free navigation.[308]

5.45. Despite this protest, Nicaraguan authorities continued to charge all Costa Ricans navigating the San Juan US$5 for the tourist card.

5.46. Beginning in 2002, in addition to the US$5 tourist card, the Nicaraguan Government began charging an additional US$2 for "immigration fees for entering Nicaraguan territory". Accordingly, Costa Ricans and other nationals who were transported in Costa Rican vessels on the San Juan from one part of Costa Rica to another had to pay US$7 to be allowed such transit.[309]

5.47. At the beginning of May 2002, Nicaraguan authorities at the Boca de Sarapiquí post once again raised the amount of the immigration fees by an additional US$2, justified as "immigration fees for exiting Nicaraguan territory", making a total of US$9 for each trip along the San Juan. Initially the additional payment of US$2 was only charged during weekends and on holidays; from Monday to Friday the charge was US$7. Subsequently, US$9 was charged at all times. These measures seriously affected those engaged in the commercial transportation of passengers, since the high costs discouraged many to travel from Sarapiquí to Barra del Colorado and Tortugero.[310]

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[306] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-207-2001, 9 May 2001: Annexes, Vol 3, Annex 71.

[307] Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/DM-JI/0818/08/01, 3 August 2001: Annexes, Vol 3, Annex 72.

[308] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-355-2001, 26 September 2001: Annexes, Vol 3, Annex 73.

[309] "Nicas raise River charge", *La Nación*, San José, 21 May 2002: Annexes, Vol 5, Annex 174.

5.48. The Director of Nicaraguan Immigration justified the new immigration charges explaining that "[i]t is not that a new tax is being applied… what happens is that the immigration fee fully established in Nicaraguan laws is being complied with."[311]

5.49. In this context, on 21 May 2002 the Costa Rican Embassy in Managua formally requested that the Ministry of Foreign Affairs inform Costa Rica: "How much are the Nicaraguan authorities charging Costa Rican vessels and citizens for navigating the San Juan River in the sector where our country has free navigation?"[312]

5.50. The Nicaraguan Ministry of Foreign Affairs responded on 29 May 2002:

> "With regard to the motive for your Honourable Embassy's inquiry, the Ministry states that in those cases where Costa Ricans enter Nicaraguan territory and navigate the lower course of the San Juan River with purposes that differ from those stipulated in the Jerez-Cañas Treaty, they must comply with the same requirements applied to all persons of foreign nationality who enter the country via any international migration post, as stipulated in the provisions of the Regulations for the Issuing, Format and Use of the Special Tourist Card published in the official daily *La Gaceta* Number 153 of 16 August 1993 and in the Law that created the Nicaraguan Institute of Tourism published in the official daily *La Gaceta* Number 149 of 11 August 1998, and the Ministry of Governance Agreement No. 001-94 of 15 March 1994 in which the Migration and Immigration Duties are established.
>
> The Ministry informs the Embassy that the Republic of Nicaragua faithfully complies with its international obligations and, consequently, respects the rights of navigation on the lower course of the San Juan River *con objetos de comercio* granted to Costa Rica under the Jerez-Cañas Treaty and the Cleveland Award."[313]

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[310] Ibid.

[311] "Immigration confirms charge to Ticos on the San Juan", *El Nuevo Diario*, Managua, 22 May 2002: Annexes, Vol 5, Annex 175.

[312] Costa Rican Embassy in Nicaragua to Ministry of Foreign Affairs of Nicaragua–General Directorate for Latin America, Note Verbale No. ECR-079-5-2002, 21 May 2002: Annexes, Vol 3, Annex 76.

[313] Nicaraguan Ministry of Foreign Affair,s Directorate of Sovereignty, Territory and International Legal Affairs to Costa Rican Embassy in Managua, Note Verbale No. MRE/DGSTAJI/335/05/02, 29 May 2002: Annexes, Vol 3, Annex 78.

5.51. More recently, the document for which a charge of US$5 (**shown opposite**) is made has been referred to as a "transit permit through the border points" ("*permiso de tránsito en los puntos fronterizos*"), which is charged to both boatmen and passengers.[314]

5.52. As can clearly be observed, Nicaragua sought to justify the charges imposed on Costa Rican navigation on the River on the ground that this navigation was not carried out "*con objetos de comercio*". But as demonstrated in Chapter 4, all the navigation that was subject to the charges is plainly protected by the Treaty of Limits and by subsequent decisions which are binding on Nicaragua.

5.53. It remains the case that all passengers and boatmen navigating on Costa Rican vessels are being charged US$9, in clear violation of Costa Rica's right of free navigation.[315]

(3) Visas and Passports

5.54. Nicaragua has imposed a requirement that both Costa Ricans as well as other foreign nationals from countries that require a visa to enter Nicaragua must carry their passports with a Nicaraguan visa while transiting the San Juan on Costa Rican vessels, even when travelling between different parts of Costa Rican territory. If this requirement is not complied with, Nicaragua refuses the right of navigation.

5.55. The first attempt to impose such a restriction occurred on 6 June 1982, when Nicaraguan army officials requested a mandatory visa for navigation on the San Juan for a group of tourists who were being transported by the Costa Rican company Swiss Travel Services, from Barra del Colorado to Puerto

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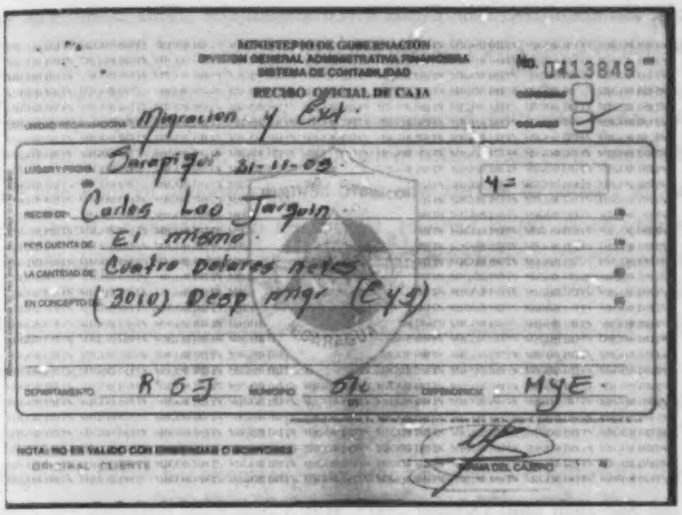
[314] For copies of receipts see Annexes, Vol 6, Annexes 243 (a) and (b).

[315] See Affidavit of Carlos Lao Jarquín, 27 January 2006: Annexes, Vol 4, Annex 84; Affidavit of Geovanny Navarro Garro, 27 January 2006: Annexes, Vol 4, Annex 85; Affidavit of Pablo Gerardo Hernández Varela, 27 January 2006: Annexes, Vol 4, Annex 86; Affidavit of Santos Martín Arrieta Flores, 27 January 2006: Annexes, Vol 4, Annex 87; Affidavit of Marvin Hay-Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; Affidavit of Windel Hodgson Hodgson, 28 January 2006: Annexes, Vol 4, Annex 93; Affidavit of Daniel Reese Wise, 28 January 2006: Annexes, Vol 4, Annex 95; and Affidavit of Wilton Hodgson Hodgson, 1 February 2006: Annexes, Vol 4, Annex 96. For copies of the receipts for payment of the $4 for "migratory services", which must be paid in addition to the $5 Tourist Card, see: Annexes, Vol 6, Annexes 245(a) and (b).



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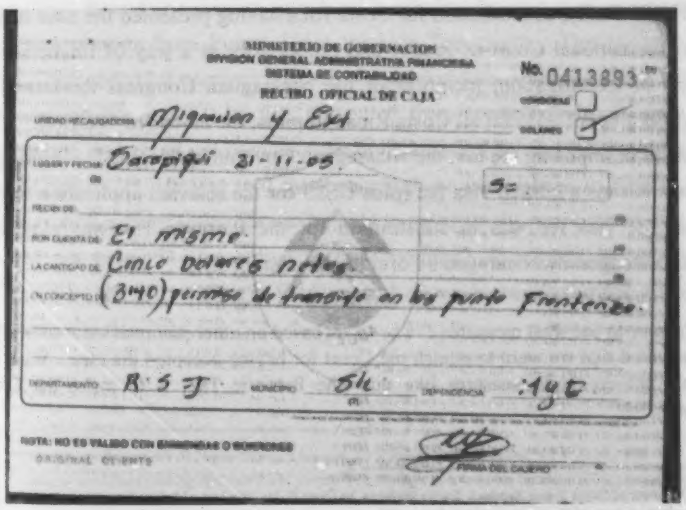
CORDOBAS ☐
DOLARES ☑

UNIDAD RECAUDADORA Migracion y Ext.
LUGAR Y FECHA Sarapiqui 21-11-05. 4=
RECIBI DE Carlos Lao Jarquin
POR CUENTA DE El mismo.
LA CANTIDAD DE Cuatro dolares netos
EN CONCEPTO DE (3010) Desp migr (E y S)
DEPARTAMENTO R S J MUNICIPIO Sh DEPENDENCIA MyE.

NOTA: NO ES VALIDO CON ENMIENDAS O BORRONES
ORIGINAL CLIENTE
FIRMA DEL CAJERO

• Entry and Exit Receipt



MINISTERIO DE GOBERNACION
DIVISION GENERAL ADMINISTRATIVA FINANCIERA
SISTEMA DE CONTABILIDAD
RECIBO OFICIAL DE CAJA

No. 0413893

CORDOBAS ☐
DOLARES ☑

UNIDAD RECAUDADORA Migracion y Ext.
LUGAR Y FECHA Sarapiqui 21-11-05. 5=
RECIBI DE
POR CUENTA DE El mismo.
LA CANTIDAD DE Cinco dolares netos.
EN CONCEPTO DE (3140) permiso de transito en los punto Fronterizo.
DEPARTAMENTO R S J MUNICIPIO Sh DEPENDENCIA MyE

NOTA: NO ES VALIDO CON ENMIENDAS O BORRONES
ORIGINAL CLIENTE
FIRMA DEL CAJERO

• Transit permit

Each person navigating in a Costa Rican vessel on the San Juan must pay US$4 for a "migratory clearance" (entry to and exit from Nicaragua) and US$5 for a "transit permit through border points".

Viejo, Sarapiquí, both in Costa Rican territory.[316] This event was duly protested by Costa Rica's Foreign Minister.[317]

5.56. On 4 July 1982, Nicaraguan army officials requested passports at the Nicaraguan Army post located in the outlet of the Sarapiquí River on the San Juan for a group of tourists who were being transported by the Costa Rican company Swiss Travel Services, from Barra del Colorado to Puerto Viejo, Sarapiquí.[318] Costa Rica's Foreign Minister also protested this event.[319]

5.57. Although Nicaragua did not respond Costa Rica's notes of protest, for the time being the incidents requesting visas for the navigation on the San Juan ceased.

5.58. Thereafter Nicaragua did not request passports and visas for navigation on the San Juan until October 2005, after Costa Rica instituted the present proceedings.

5.59. Initially, as retaliation for Costa Rica having presented the case before the International Court of Justice and purportedly as a way of financing the costs of the litigation, members of the Nicaraguan Congress threatened to impose a tax of 35% on all Costa Rican imports, the so-called "Patriotic Tax". Instead of imposing the tax, the Nicaraguan Government decided to impose on Costa Ricans a US$20 visa fee (plus US$5 for the relevant application form). That the visa fee was in substitution for the Patriotic Tax was expressly acknowledged by Nicaragua's Foreign Minister:

> "We have to see what measures can be taken based on other points of view so it is not interpreted that we want to punish the Court for having accepted the case. What we could achieve with measures like this [the Patriotic Tax] is to make the Court hostile."[320]

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[316] Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Minister of Public Security, Angel Edmundo Solano, 7 June 1982: Annexes, Vol 6, Annex 223.

[317] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar Ramón Téllez, Note No. D.M.133-82, 8 June 1982: Annexes, Vol 3, Annex 41.

[318] Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 13 July 1982: Annexes, Vol 6, Annex 225.

[319] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 126-82, 16 July 1982: Annexes, Vol 3, Annex 42.

[320] "We can stop the case", *El Nuevo Diario*, Managua, 2 October 2005: Annexes, Vol 5, Annex 184.

> "With such measure (the imposition of the Visa to Costa Ricans), considering that some 100 thousand Costa Ricans enter Nicaraguan territory each year, the funds necessary to allow Nicaragua to face the case presented in The Hague over the San Juan River would be obtained. At that moment, Minister Caldera indicated that with that measure Nicaragua would not need to impose the patriotic tax of 35 per cent to Costa Rican products that enter Nicaragua, an initiative that was proposed by some members of the National Assembly."[321]

5.60. In October 2005 local residents on the Costa Rican side were informed by Nicaraguan officials that from 17 October 2005 any person, including children, transiting on the San Juan would be required to show their identification documents to the Nicaraguan authorities.[322] Subsequently the Nicaraguan authorities warned local residents and boat owners that without a passport and a Nicaraguan visa, they would not be allowed to navigate the San Juan.[323]

5.61. This admonition has been enforced, at least selectively. On 15 November 2005, a Nicaraguan Immigration official on the Boca de Sarapiquí Army Post forbade navigation to a local boatman who was transporting two European tourists from Puerto Viejo towards Tortuguero. The Nicaraguan official demanded his passport with the Nicaraguan visa: since the Costa Rican boatman did not carry it he was prevented from continuing his journey to Tortuguero, and could not complete the transportation service contracted with his passengers.[324] He was told that henceforth he would have to present his passport with a Nicaraguan visa to be able to navigate the San Juan or else he "would not pass".[325] According to this boatman's testimony, he was also informed by the Nicaraguan authorities that a visa is only valid for a single entry into the San Juan.[326]

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[321] "Ticos will pay for a visa", *El Nuevo Diario*, Managua, 19 October 2005: Annexes, Vol 5, Annex 188.

[322] "Nicaragua conditions passing of Costa Rican vessels", *La Nación*, San José, 16 October 2005: Annexes, Vol 5, Annex 185.

[323] "Nicaragua demands a Visa and Passport on the River", *La Nación*, San José, 30 October 2005: Annexes, Vol 5, Annex 189.

[324] "On November fifteenth of this year, our colleague Pablo Hernandez Varela was heading from Puerto Viejo de Sarapiqui to Tortuguero with two tourists, and since he was not carrying his passport, the Nicaraguan authorities sent him back, which forced him to return along with the tourists…": Mr. Jorge Lao Jarquín and Mr. Santos Arrieta Flores to Costa Rican Foreign Ministry, 22 November 2005: Annexes, Vol 6, Annex 238.

[325] Affidavit of Pablo Gerardo Hernández Varela, 27 January 2006: Annexes, Vol 4, Annex 86.

[326] Ibid.

5.62. On 21 November 2005, another local Costa Rican boatman was detained for approximately two hours by the Nicaraguan authorities at the Boca del Sarapiquí Army post on the San Juan, when he was travelling from Tortuguero towards Puerto Viejo, Sarapiquí. The Nicaraguan officials alleged that the Costa Rican boatman was not carrying his passport at the time.[327] In order to continue with his commercial activity of transportation of passengers, this boatman had no choice but to travel twice to San José to obtain a Nicaraguan visa, at a cost of US$25 on each occasion, in addition to travel costs and time spent.[328] A copy of the visa stamped in the boatman's passport is shown in the following page.

5.63. Other witnesses have given their accounts of how Nicaraguan authorities have demanded that they carry a Costa Rican passport with a Nicaraguan visa to be allowed to navigate the San Juan, as well as evidence of the resulting loss suffered in respect of their commercial activities.[329]

5.64. Until the filing of this Memorial, Nicaragua continues to impose the requirement of a visa and a passport to navigate the San Juan. This is a clear violation of Costa Rica's right to free and perpetual navigation. Costa Rica does not contest the right of Nicaragua to require a visa for any foreigner, including Costa Ricans, to stay in Nicaragua's territory. However, Costa Rica contests the imposition of a visa whether as a requirement for navigating the San Juan or for landing on the Nicaraguan bank. According to the Treaty of Limits, Costa Ricans have the right to land on the Nicaraguan bank, just as Nicaraguans do on the Costa Rican bank. This landing (without the purpose of staying in Nicaraguan territory) is also covered by article VI and no visa can be required.

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[327] "Yesterday the same thing occurred to our colleague Carlos Lao Jarquin, who was returning from Tortuguero to Puerto Viejo de Sarapiquí. He was not carrying tourists and at the Post at the mouth of the Sarapiquí, the Nicaraguan authorities retained him there for a time period of between an hour-and-a-half and two hours because he was not carrying a passport being that, as we said, he was traveling to Costa Rican territory": Mr. Jorge Lao Jarquin and Mr. Santos Arrieta Flores to Costa Rican Foreign Ministry, 22 November 2005: Annexes, Vol 6, Annex 238.

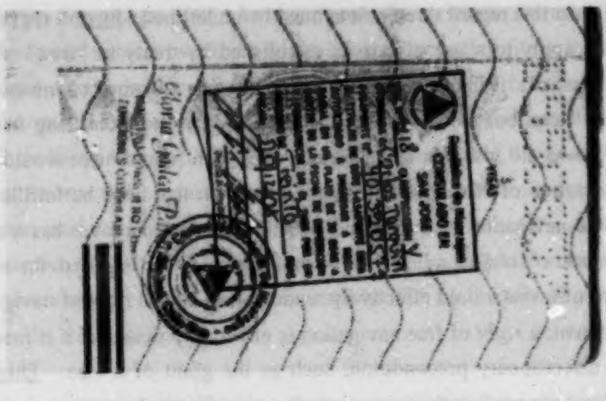
[328] Affidavit of Carlos Lao Jarquin, 27 January 2006: Annexes, Vol 4, Annex 84. Copies of the payment receipts for each visa, as well as of the visas themselves, are included in: Annexes, Vol 6, Annex 244.

[329] Affidavit of Geovanny Navarro Garro, 27 January 2006: Annexes, Vol 4, Annex 85; Affidavit of Santos Martín Arrieta Flores, 28 January 2006: Annexes, Vol 4, Annex 87; Affidavit of Marvin Hay-Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; Affidavit of Armando Perla Pérez, 28 January 2006: Annexes, Vol 4, Annex 92; Affidavit of Windel Hodgson Hodgson, 29 January 2006: Annexes, Vol 4, Annex 93; Affidavit of Daniel Reese Wise, 29 January 2006: Annexes, Vol 4, Annex 95.

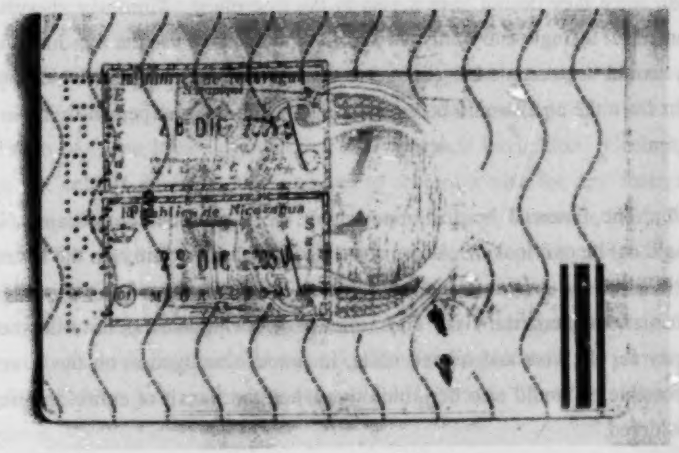
5.65. In this regard three points must be underlined. First, a regime of visas cannot apply to a use of a river established by treaty as "free" without any qualification. When Costa Ricans (or citizens of other countries on board Costa Rican boats) navigating on the San Juan are exercising that right of navigation, no visa can be required. Any such requirement would annul the qualification of "free", establishing a condition that must be fulfilled in order that the navigation be authorised, a condition that moreover has a significant economic cost. Second, if such a condition could be imposed, the subsequent denial of a visa would effectively render Costa Rica's right of navigation void of content: a *right* of free navigation is effectively denied if it is made subject to a discretionary precondition, such as the grant of a visa. Third, from a practical perspective this requirement could effectively prevent riparians from using the San Juan at all, since they would need to use the River to travel to the nearest Nicaraguan Consulate in Costa Rica, something they would not be able to do since they do not have a visa in the first place. Moreover, the visa is granted for a single entry only. A person who needs to use the San Juan every day would in principle be required to obtain one visa each day, which (quite apart from the cost) would be virtually impossible for any person living in the region.

5.66. The financial burden imposed by the requirement to obtain a visa should not be overlooked. A visa costs US$25 for every entry on the River, in addition to the expenses incurred for travelling to the nearest Nicaraguan Consulate to obtain the visa. Thus, for a person who does not have the means to pay for the visa and related costs, in practice navigation on the River is impossible; it would also be prohibitive when the transit of entire families is considered.

5.67. In short, Nicaragua not only requires consular authorisation to navigate the River (which authorisation can in principle be denied); it also requires that the authorisation be paid for, further restraining the ability to travel freely on the San Juan. By these actions Nicaragua undermines the ability of Costa Rica, Costa Ricans and other nationals transiting to and from Costa Rican territory to effectively exercise the rights of perpetual and free navigation.



• Visa Dec 05


República de Nicaragua
28 DIC 2005
República de Nicaragua
28 DIC 2005

• Entry and Exit seal 28-12-2005

Visa granted for a single entry to Nicaragua, valid for 30 days, required for Costa Rican citizens to be permitted to navigate the San Juan. A boatman's passport stamped with an entry and exit seal on the same day at Sarapiquí by Nicaraguan authorities. The passport holder was required to obtain a new visa in order to navigate in the San Juan again.

(4) Timetables

5.68. The imposition of navigational timetables constitutes a restriction that inevitably violates Costa Rica's perpetual rights of free navigation. None of the applicable instruments authorise Nicaragua to impose timetables or time limits on Costa Rican navigation of the River.

5.69. Before the civil war in Nicaragua that followed the Sandinista revolution in 1979, no timetables were imposed on Costa Rican navigation.[330] It was in the context of the Nicaraguan civil war that Nicaragua first imposed timetables.

5.70. In March 1983 the Nicaraguan army prohibited navigation on the San Juan after 6pm. The Nicaraguan officials affirmed that the measure was taken for national security reasons due to the possibility of a counter-revolutionary attack.[331] This action was protested by Costa Rica on 8 March 1983 as a violation of the Treaty of Limits.[332]

5.71. The impact of such restrictions on individuals using the River is illustrated in the statement of Marvin Hay González:

> "according to his experience, it was dangerous to navigate the San Juan River around the eighties due to the armed conflict in Nicaragua… [O]n several occasions, the Nicaraguan Army forced him to stop the vessel in the afternoon, and he recalls that they pointed machine guns at him as he was told that he was not allowed to navigate the river, and that he had to sleep overnight on his vessel in order to continue his journey the next day… [Navigation] returned to normal after the war." [333]

5.72. As Marvin Hay González stated in his affidavit, after the end of the war in Nicaragua navigation returned to normal. This is confirmed by boatman Ruben Lao who stated that:

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[330] Several boatmen with many years of navigating the San Juan have confirmed that it was during the times when the Sandinistas held power in Nicaragua that the timetables and other restrictions to Costa Rican navigation on the San Juan were imposed. See Affidavit of Marvin Hay Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; Affidavit of Wilton Hodgson Hodgson, 1 February 2006: Annexes, Vol 4, Annex 96; and Affidavit of Ruben Lao Hernández, 16 February 2006: Annexes, Vol 4, Annex 103.

[331] "Foreign Affairs Ministry will protest again to Nicaragua", *La Nación*, San José, 7 March 1983: Annexes, Vol 5, Annex 118.

[332] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Ambassador to Costa Rica, Rogelio Ramiréz Mercado, Note No. D.M. 014-83, 8 March 1983: Annexes, Vol 3, Annex 47.

[333] See Affidavit of Marvin Hay Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91.

> "After the end of the Nicaraguan counterrevolution, around the year nineteen eighty eight, navigation along the San Juan River returned to normal, and he did not encounter any problems navigating, even at night."[334]

5.73. On the occasion of a visit by the Nicaraguan President to the San Juan on 3 August 1998, the Nicaraguan Army prohibited all Costa Rican navigation on the River between 9am and 5pm.[335]

5.74. On 4 July 1999 Costa Rican residents in the border region indicated that Nicaragua had restricted navigation in the San Juan from 6am to 5.30pm.[336] Similar accounts were given by witnesses. For example Messrs Norman Scott Chinchilla and Jorge Lao Jarquín attest to the imposition of timetables for Costa Rican navigation on the San Juan.[337] The statement of two Nicaraguan Army officers—one from the post at Boca Sarapiquí, and the other at the post of Delta Colorado—are also recorded confirming the timetables.[338]

5.75. On 9 May 2001 the Government of Costa Rica protested the imposition of timetables on Costa Rican navigation.[339] The Nicaraguan Foreign Minister replied that the Republic of Nicaragua was entitled to the imposition of such timetables, stating that:

> "In relation to the limitation on the navigation on the San Juan River as regards the hours of the day, it should be noted that it is Nicaragua's right and obligation, as the sovereign State, to adopt the regulations necessary for guaranteeing the safety of the people and vessels travelling along the river and avoid all manner of criminal activities." [340]

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[334] Affidavit of Ruben Lao Hernández, 16 February 2006: Annexes, Vol 4, Annex 103.

[335] "Nicaraguan hostility worsens", *La Nación*, San José, 4 August 1998: Annexes, Vol 5, Annex 147.

[336] "San Juan: Calm and uneasiness", *La Nación*, San José, 4 July 1999: Annexes, Vol 5, Annex 155.

[337] "He also states that the Nicaraguan authorities have set restrictions on the navigation schedule on the San Juan River." Statement by Mr. Norman Scott Chinchilla, recorded in the Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83.

[338] "After the payment was concluded, we asked Sergeant Trejos whether we were allowed to navigate at night, but he replied that navigation on the San Juan River was prohibited after five o'clock in the afternoon as instructed by superior authorities… At that moment, we asked the young officer, who identified himself as Sergeant García, whether we could navigate the River at night to continue our return, but he replied that navigation on the San Juan River was prohibited after five thirty in the afternoon as instructed by superior authorities. I then observed a handwritten notice that said that navigation on the San Juan River was only allowed from six in the morning until five thirty in the afternoon." Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83.

[339] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-207-2001, 9 May 2001: Annexes, Vol 3, Annex 71.

[340] Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/DM-JI/0818/08/01, 3 August 2001: Annexes, Vol 3, Annex 72.

5.76. Costa Rica's response to the Nicaraguan letter of 3 August 2001 reaffirmed that the imposition of timetables on Costa Rica for navigation on the San Juan violated its rights of free navigation as established by the relevant instruments.[341]

5.77. Despite Costa Rica's efforts to have its rights respected, Nicaragua has continued to impose timetables and time limits on Costa Rica's navigation on the San Juan. This action continues to cause great inconvenience to the Costa Ricans who regularly need to use the San Juan in order to travel, including travel for reasons related to health and education.[342]

(5) Searches

5.78. In addition to other violations of the Costa Rican rights of free navigation, Nicaraguan officials have conducted searches of Costa Rican and other nationals navigating the San Juan on Costa Rican vessels with the clear purpose of creating obstacles to Costa Rican navigation on the River.

5.79. It was in the early 1980s, in the context of the Nicaraguan civil war, that searches of Costa Ricans and their belongings were first carried out by the Nicaraguan Army.[343] A number of these incidents have already been mentioned.[344]

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[341] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-355-2001, 26 September 2001: Annexes, Vol 3, Annex 73.

[342] In her affidavit, witness Sandra Díaz Alvarado, who works for the regional Health Service in San Carlos, stated that the timetables imposed by Nicaragua prevent neighbours from travelling to the nearest health post in case of an emergency: Affidavit of Sandra Díaz Alvarado, 16 February 2006: Annexes, Vol 4, Annex 100. Similarly, witness Diane Gómez Bustos, who teaches at Boca Río Cureña, stated in her affidavit that the navigational timetables imposed by Nicaragua have affected her teaching activities: see Affidavit of Diane Gómez Bustos, 16 February 2006: Annexes, Vol 4, Annex 101.

[343] See Affidavit of Marvin Hay-Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; and Affidavit of Armando Perla Pérez, 28 January 2006: Annexes, Vol 4, Annex 92.

[344] See "Nicas confiscate material from journalists on the San Juan ", *La Nación*, San José, 24 February 1983: Annexes, Vol 5, Annex 117. See also Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Minister of Public Security, Angel Edmundo Solano, 7 June 1982: Annexes, Vol 6, Annex 223; Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, Note No. D.M.133-82, 8 June 1982: Annexes, Vol 3, Annex 41; Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 5 July 1982: Annexes, Vol 6, Annex 224; Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 13 July 1982: Annexes, Vol 6, Annex 225; Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 126-82, 16 July 1982: Annexes, Vol 3, Annex 42; Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Ambassador to Costa Rica, Rogelio Ramírez Mercado, Note No. D.M. 014-83, 8 March 1983: Annexes, Vol 3, Annex 47.

5.80. On 1 May 2004 three Costa Ricans who were transiting the San Juan were stopped by Nicaraguan officers from the Ministry of Environment and Natural Resources of Nicaragua. Additionally, their belongings were seized.[345]

5.81. Searches of passengers of Costa Rican vessels have increased significantly after Costa Rica filed the application in the present case.[346] Witnesses have complained about the searches carried out by Nicaraguan Army members at the Boca de San Carlos post, which are carried out even for the schoolchildren who must travel on the River to reach their school in Boca de San Carlos, in Costa Rica territory.[347] Another schoolteacher explained how the members of the Nicaraguan Army have searched her belongings when she passed that Army post, purportedly looking for fish or crayfish.[348] Another witness stated that Nicaraguan Army members pointed their machine guns at him when he passed that Army post, and then proceeded to search his vessel and his belongings. According to this witness, many Costa Ricans living in the area have suffered abuse from the Nicaraguan Army authorities, but are afraid to report them because of fear of reprisals.[349]

5.82. For the reasons given, it is clear that by forcing Costa Rican vessels and their passengers to land at the Nicaraguan Army posts, and by searching the passengers and their possessions, Nicaragua is unlawfully interfering with Costa Rica's perpetual rights of free navigation on the San Juan.

(6) Flags

5.83. In the context of the differences that arose between both countries in July 1998, after the Nicaraguan Government prohibited Costa Rican police from navigating on the San Juan, in August 1998 Costa Rican boatmen stated that the Nicaraguan authorities had warned them that they were unable to fly the Costa Rican flag while navigating on the River.[350]

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[345] "Charge for Ticos travelling on the San Juan reinstated", *El Nuevo Diario*, Managua, 7 May 2004: Annexes, Vol 5, Annex 180.

[346] In the Affidavit of Santos Martin Arrieta Flores, 27 January 2006, the deponent states that the passengers he transports in his vessels have been regularly searched at the Nicaraguan Army Post located in Boca de Sarapiquí: Annexes, Vol 4, Annex 87.

[347] See Affidavit of Diane Gomez Bustos, 16 February 2006: Annexes, Vol 4, Annex 101.

[348] See Affidavit of Sandra Diaz Alvarado, 16 February 2006: Annexes, Vol 4, Annex 100.

[349] See Affidavit of Luis Yanan Corea Trejos, 16 February 2006: Annexes, Vol 4, Annex 102.

5.84. Shortly after, on 25 September 1998, Nicaraguan officials stationed in Boca de Sarapiquí forced Costa Rican boatmen to remove the Costa Rican flag which they flew over their vessels.[351]

5.85. Likewise in 2001, the Nicaraguan authorities once again forced a Costa Rican boatman to lower the Costa Rican flag while navigating the San Juan.[352] This and other Nicaraguan actions in violation of Costa Rica's perpetual rights of free navigation were protested by Costa Rica.[353] After Nicaragua sought to justify its requirement in terms of a rule of "international custom and courtesy",[354] the Costa Rican Foreign Minister responded:

> "...since the circumstances are that of river and not maritime navigation and due to the non-existence of internationally binding regulations, the Nicaraguan authorities cannot demand of Costa Rican vessels that they lower their Costa Rican flag, nor that they raise the flag of that sister country, on navigating the San Juan River."[355]

5.86. After the exchange of diplomatic notes on this matter, it appears that Nicaragua did not again request Costa Rican boatmen to lower the Costa Rican flag.

5.87. However in October 2005, after Costa Rica had filed its application before the Court, Nicaragua began once again demanding that Costa Rican residents and boatmen carry the Nicaraguan flag in their vessels while navigating the River. This measure was first verbally announced by Nicaraguan authorities to the local Costa Rican residents of the Boca de San Carlos region, with the threat that failure to comply would entail a fine or impediment of navigation.[356]

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[350] "Nicaraguan hostility worsens", *La Nación*, San José, 4 August 1998: Annexes, Vol 5, Annex 147.

[351] "Commerce decreases along the border", *La Nación*, San José, 27 September 1998: Annexes, Vol 5, Annex 152.

[352] The witness declared that "on one occasion, the authorities of the Nicaraguan Army ordered him to take down the Costa Rican flag from his vessel and informed him that it had to be substituted by the Nicaraguan flag every time the vessel was to pass through the San Juan River": Affidavit of 5 May 2001: Annexes, Vol 4, Annex 83. A similar statement was also presented by another witness in the following terms: "...around the year two thousand one, the Nicaraguan Army were demanding to fly the Nicaraguan flag on our vessels in order to be able to navigate the San Juan River. This action was maintained for several weeks until Costa Rica challenged the measure officially and the practice was suspended": Affidavit of Santos Martín Arrieta Flores, 27 January 2006: Annexes, Vol 4, Annex 87.

[353] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-207-2001, 9 May 2001: Annexes, Vol 3, Annex 71.

[354] Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, to Costa Rican Foreign Minister, Roberto Rojas López, Note No. MRE/DM-JI/0818/08/01, 3 August 2001: Annexes, Vol 3, Annex 72.

[355] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Francisco Xavier Aguirre Sacasa, Note No. DM-355-2001, 26 September 2001: Annexes, Vol 3, Annex 73.

5.88. This measure taken by Nicaragua caused concern among local Costa Rican residents who need to use the San Juan regularly as a means of communication for reasons ranging from commerce to education and health. On 18 October 2005 the Municipal Mayor of San Carlos denounced this measure to the Costa Rican Foreign Ministry, indicating that it was causing fear to Costa Rican residents in the bordering zone of Boca San Carlos, for whom it was difficult if not impossible to obtain a Nicaraguan flag.[357]

5.89. On 20 October 2005 the Costa Rican Foreign Minister requested the Nicaraguan Foreign Minister not to apply the requirement of carrying the Nicaraguan flag so as not to aggravate the situation in the region.[358] The Nicaraguan Foreign Minister did not agree to Costa Rica's request, but rather insisted on Nicaragua's prerogative to impose the pertinent regulations on its territory. In a note dated 9 November 2005 Nicaragua's Foreign Minister stated:

> "In compliance with the rights established in the Treaty and the Award, it is the duty of the State of Nicaragua, as Sovereign, to regulate and provide the rules and provisions she deems necessary to exercise the vesting of these powers over her territory."[359]

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[356] "Nicaragua conditions passing of Costa Rican vessels", *La Nación*, San José, 16 October 2005: Annexes, Vol 5, Annex 185. See also "Costa Rican vessels will bear the Nicaraguan flag", *La Prensa de Nicaragua*, Managua, 17 October. 2005: Annexes, Vol 5, Annex 186; "Nicaragua conditions passing of Costa Rican vessels", *El Nuevo Diario*, Managua, 17 October 2005: Annexes, Vol 5, Annex 187; and "Costa Rican Foreign Affairs Minister seeks dialogue regarding visas and flags ", *El Nuevo Diario*, 1 November 2005: Annexes, Vol 5, Annex 190.

[357] Municipal Mayor of San Carlos, Costa Rica, Lic. Alfredo Córdoba Soro, to Director of Foreign Policy, Costa Rican Foreign Ministry, Lic. José Joaquín Chaverri Sievert, Note No. AM-1315-2005, 18 October 2005: Annexes, Vol 6, Annex 235. See also Affidavit of José Moreno Rojas, 16 July 2006: Annexes, Vol 4, Annex 108.

[358] Costa Rican Foreign Minister, Roberto Tovar Faja, to Nicaraguan Foreign Minister, Norman Caldera Cardenal, Note No. DM-484-05, 20 October 2005: Annexes, Vol 3, Annex 81.

[359] Nicaraguan Foreign Minister, Norman Caldera Cardenal, to Costa Rican Foreign Minister, Roberto Tovar Faja, Note No. MRE/DM-JI/1284/11/05, 9 November 2005: Annexes, Vol 3, Annex 82.

5.90. To this day Nicaragua continues to impose an obligation to carry the Nicaraguan flag on all Costa Rican vessels transiting the River.[360]

5.91. Costa Rica's perpetual rights of free navigation on the San Juan entitle Costa Rican vessels to carry the Costa Rican flag while navigating. As recalled in Chapter 4, Nicaragua itself stated in 1868 that the only flags that can be carried while navigating the San Juan are the Nicaraguan and the Costa Rican flags.[361] Nicaragua cannot force Costa Rican vessels to lower the Costa Rican flag, nor force them to carry the Nicaraguan flag as a condition for navigating the River.

C. Breaches of Costa Rica's rights of navigation for the purposes of commerce

5.92. As has been noted in Chapter 4, Nicaragua seeks to minimize the scope of the Costa Rican rights of free navigation for commercial purposes, contending that it is limited to the transportation of commercial goods. This recent Nicaraguan view of article VI of the Treaty of Limits has been already rebutted in that Chapter.

5.93. This section will address the breaches committed by Nicaragua of Costa Rica's right of free navigation for the purposes of commerce, both in its sense of communication and that of trade.

(1) Commerce as communication

5.94. It was in the early 1980s, in the context of the armed opposition to the Sandinista Government, that Nicaragua first imposed restrictions on Costa Rica's use of the San Juan for communication purposes.

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[360] As confirmed by Affidavit of Carlos Lao Jarquín, 27 January 2006: Annexes, Vol 4, Annex 84; Affidavit of Geovanny Navarro Garro, 27 January 2006: Annexes, Vol 4, Annex 85; Affidavit of Pablo Gerardo Hernández Varela, 27 January 2006: Annexes, Vol 4, Annex 86; Affidavit of Santos Martín Arrieta Flores, 27 January 2006: Annexes, Vol 4, Annex 87; Affidavit of Marvin Hay-Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; Affidavit of Daniel Reese Wise, 28 January 2006: Annexes, Vol 4, Annex 95; and Affidavit of Diane Gómez Bustos, 16 February 2006: Annexes, Vol 4, Annex 101; Affidavit of José Moreno Rojas, 16 July 2006: Annexes, Vol 4, Annex 108.

[361] See paragraph 4.10.

5.95. On 4 November 1980 a Costa Rican official vessel transporting Costa Rican officials from the Ministry of Health was shot at by the Nicaraguan Army while navigating the River.[362] At that time, the Nicaraguan Foreign Minister, acknowledging Costa Rica's rights of free navigation but invoking national security considerations, requested that all Costa Ricans inform Nicaraguan officials when they entered the San Juan, in order to avoid such incidents.[363]

5.96. It is noteworthy that, at that time, Costa Rican navigation for official purposes, such as those performed by the officials from the Ministry of Health, was not considered by Nicaragua as being outside the scope of Costa Rican navigational rights. By acknowledging that Costa Rica had a right of free navigation when the incident took place and subsequently formally apologising for it, not only did Nicaragua recognise that Costa Rica was entitled to official navigation, but also that such navigation was for the purpose of communication, since this is precisely what the Health officials were doing. As seen in Chapter 4, it was only in the 1990s that Nicaragua began to take a different and more restrictive view.

5.97. On 4 August 1998, shortly after Nicaragua issued the prohibition on navigation by Costa Rican police, officials from the Nicaraguan Army prevented a judge, a fiscal agent, a public defender and two officials from the Judicial Investigation Organism, from navigating the San Juan on their way to Fátima de Sarapiquí to investigate the death of an 11-month old child. The Costa Rican officials were navigating in an official vessel. When they reported to the Nicaraguan guard posts at Boca de Sarapiquí the Nicaraguan Army officer refused to authorise their passage.[364]

5.98. In September 1998 Nicaraguan officials likewise prevented Costa Rican technicians from the Programme of the Eradication of Screwworms from

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[362] "Foreign Affairs Minister says that the Cañas-Jerez Treaty is unquestionable", *La Nación*, San José, 9 November 1980: Annexes, Vol 5, Annex 112.

[363] "Nicaragua conditions navigation on the waters of the San Juan River", *La Nación*, San José, 8 November 1980: Annexes, Vol 5, Annex 111.

[364] "Nicaragua would charge visa to Costa Rican policemen", *La Nación*, San José, 6 August 1998: Annexes, Vol 5, Annex 150.

Cattle from navigating the San Juan on their way to implement the Programme in the Costa Rican border zone. As with previous violations, this incident was protested by Costa Rica.[365]

5.99. Nicaragua responded to Costa Rica's note of protest in the following terms:

> "In this respect, I beg to differ with Your Excellency's remarks concerning the fact that the Jeréz-Cañas Treaty and the Cleveland Award establish a right of passage along the San Juan River. On the contrary, allow me to remind you that the perpetual rights of free navigation granted by Nicaragua to Costa Rica in the aforementioned legal instruments are specifically limited to *objetos de comercio* and a perfectly clearly defined stretch of the said river."[366]

5.100 On 26 September 2000, two officials from the Costa Rican Judicial Investigation Organism and an officer from the police public force were travelling unarmed in a Costa Rican vessel, on a mission to investigate a cattle robbery that had taken place in a farm on the Caño Rio Jardín area, situated five kilometres from the mouth of the San Carlos on its southern bank. Their navigation was prevented by Nicaraguan Army officers at the Boca de San Carlos post and they were informed that in accordance with orders received, they would not be able to continue their journey.[367] This violation was also protested by Costa Rica.[368]

5.101 It is important to note that tightened Nicaraguan restrictions have resulted in the suspension, from November 2005, of domiciliary health services provided by the Social Security Office to certain local communities such as Boca Cureña and Las Chorreras.[369] As a result, the 80 inhabitants of Las Chorreras community (including 13 children) have lost their primary health service. Similarly, the 84 inhabitants of Boca Cureña (including 10 children) have also lost their primary health service.[370] The locations mentioned are shown on **Sketch Map 3** (opposite page 9 above).

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[365] Costa Rican Foreign Minister, Roberto Rojas López, to Nicaraguan Foreign Minister, Eduardo Montealegre, 7 September 1998: Annexes, Vol 3, Annex 52.

[366] Nicaraguan Foreign Minister, Eduardo Montealegre, to Costa Rican Foreign Minister, Roberto Rojas López, 30 September 1998: Annexes, Vol 3, Annex 53.

[367] "Police were not allowed to navigate", *La Nación*, San José, 28 September 2000: Annexes, Vol 5, Annex 166. See also "Energetic protest against Nicaragua" *La Nación*, San José, 29 September 2000: Annexes, Vol 5, Annex 167.

[368] Costa Rican Acting Foreign Minister, Elayne Whyte, to Nicaraguan Acting Foreign Minister, José Adán Guerra, Note No. DVM-420-00, 28 September 2000: Annexes, Vol 3, Annex 68.

[369] See the following correspondence: Director of the Health Area of Pital of San Carlos, Costa Rican Department of Social Security, Dr. Kattia Corrales Barboza, to Director of the Regional Management and Health Service Networks,

5.102 Education services have also been affected. Schoolteacher Diane Gomez Bustos, who has been teaching in the region for six years, testifies that

> "on account of her duties, the only way of travelling to and from Boca Rio Cureña is via the San Juan River, in particular when she must attend training and planning meetings, visit relatives or attend to any other matter... [O]n occasion, she has not, especially in the afternoons, been allowed to travel along the San Juan River, from Boca de San Carlos to her place of work in Boca Rio Cureña, which has prevented her from beginning classes on time at the school where she teaches."[371]

5.103. Restrictions imposed by Nicaragua have also prevented Costa Rican residents of the border region as well as other Costa Ricans from using the River as a waterway for communication. For many Costa Ricans, the River constitutes the only means of access to their farms and properties and Nicaragua's restrictions on Costa Rica's free navigation, as well as the intimidating attitude of its authorities, are seriously affecting them.[372]

North Huetar Region, Dr. Omar Alfaro Murillo, Note No. RHNPI-303, 7 November 2005: Annexes, Vol 6, Annex 236; Regional Director of the North Huetar Regional Medical Services, Dr. Omar Alfaro Murillo, to General Director of Regional Management and Health Service Networks, Dr. Armando Villalobos Castañeda, Note No. DGRRSSRHN-2511-05, 15 November 2005: Annexes, Vol 6, Annex 237; and Head of the Nurse Department of the Health Area of Pital, Costa Rican Department of Social Security, Lic. Antonio García Pérez, to Director of the Health Area of Pital of San Carlos, Costa Rican Department of Social Security, Dr. Kattia Corrales Barboza, Note No. DAP-EA-030-2006, 9 February 2006: Annexes, Vol 6, Annex 239. See also Affidavit of Ana Gabriela Mazariegos Zamora, 14 February 2006: Annexes, Vol 4, Annex 98; Affidavit of Kattia Patricia Corrales Barboza, 16 February 2006: Annexes, Vol 4, Annex 99; and Affidavit of Sandra Díaz Alvarado, 16 February 2006: Annexes, Vol 4, Annex 100.

[370] Head of the Nursing Department of the Health Area of Pital, Costa Rican Department of Social Security, Lic. Antonio García Pérez, to Director of the Health Area of Pital of San Carlos, Costa Rican Department of Social Security, Dr. Kattia Corrales Barboza, Note No. DAP-EA-030-2006, 9 February 2006: Annexes, Vol 6, Annex 239.

[371] See Affidavit of Diane Gómez Bustos, 16 February 2006: Annexes, Vol 4, Annex 101.

[372] See, e.g., "Charge for Ticos travelling on the San Juan reinstated", *El Nuevo Diario*, Managua, 7 May 2004: Annexes, Vol 5, Annex 180; "Nicaragua conditions passing of Costa Rican vessels", *La Nación*, San José, 16 October 2005: Annexes, Vol 5, Annex 185; "Nicaragua conditions passing of Costa Rican vessels", *El Nuevo Diario*, Managua, 17 October 2005: Annexes, Vol 5, Annex 187.

(2) Commerce as transportation of goods and persons (including tourism)

5.104. As has been established, Costa Rica's navigational rights include the commercial transportation of goods and persons. In a pattern which will be by now familiar, Nicaraguan restrictions on Costa Rica's navigation for the transportation of tourists started in the early 1980s. In 1982, the navigation of the Costa Rican tourist company Swiss Travel Services was interfered with by the Nicaraguan Army on several occasions.[373]

5.105. Swiss Travel Services reported that on 6 June 1982 members of the Nicaraguan Army stopped them when they attempted to enter the San Juan, while transporting a group of tourists from the Tortuguero Channels on their way to the Sarapiquí River. The army members informed them that navigation of the River by Costa Rican vessels was no longer authorised, especially if they were transporting North American and European tourists.[374] Although this incident was protested by Costa Rica,[375] similar incidents continued to occur.[376]

5.106. In its response to the Costa Rican protests, Nicaragua affirmed that as sovereign it has the right to adopt the necessary measures aimed to preserve its safety and internal order. But it did not deny that Costa Rica's rights of free navigation on the San Juan include the transportation of tourists.[377]

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[373] See Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Minister of Public Security, Angel Edmundo Solano, 7 June 1982: Annexes, Vol 6, Annex 223; Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 5 July 1982: Annexes, Vol 6, Annex 224; and Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 13 July 1982: Annexes, Vol 6, Annex 225.

[374] Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Minister of Public Security, Angel Edmundo Solano, 7 June 1982: Annexes, Vol 6, Annex 223.

[375] Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i. to Costa Rica, Oscar Ramón Téllez, Note No. D.M.133-82, 8 June 1982: Annexes, Vol 3, Annex 41.

[376] Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Minister of Foreign Affairs, Ekhart Peters, 5 July 1982: Annexes, Vol 6, Annex 224; Manager of Swiss Travel Services, Emilia Gamboa, to Costa Rican Deputy Foreign Minister, Ekhart Peters, 13 July 1982: Annexes, Vol 6, Annex 225; Costa Rican Foreign Minister, Fernando Volio Jiménez, to Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 126-82, 16 July 1982: Annexes, Vol 3, Annex 42; Costa Rican Foreign Minister, Fernando Volio, to Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, Note No. D.M. 127-82, 20 July 1982: Annexes, Vol 3, Annex 43.

[377] Nicaraguan Chargé d'Affaires a.i to Costa Rica, Oscar Ramón Téllez, to Costa Rican Foreign Minister, Fernando Volio Jiménez, Note No. E.N. 789/82, 2 August 1982: Annexes, Vol 3, Annex 44.

5.107. As noted above, in March 1994 the Nicaraguan Government instructed its officials in the San Juan to charge US$5 for a mandatory tourist card to any Costa Rican navigating along the River. In response the Costa Rican Foreign Minister stated that "such measure was unacceptable and that, evidently, commerce includes tourist activity." He added that "it is inadmissible that in the 20th Century national and international tourism not be considered an important activity in modern commerce."[378]

5.108. Nonetheless Nicaragua's restrictions on Costa Rica's commercial transportation of passengers, particularly tourists, have continued and have resulted in significant losses to the Costa Rican tourism industry.[379] Tour operators and boatmen have been forced to curtail their operations.[380] This situation persists to this day.

D. Breaches of Costa Rica's rights of protection of commerce, safeguard, defence and re-supply of police posts

5.109. As established in Chapter 4, Costa Rica has the right to protect navigation for the purposes of commerce on the San Juan as well as the right and obligation to safeguard the San Juan and to defend the San Juan and the common Bay of San Juan del Norte.[381] These rights and obligations entail that Costa Rican officials be able to navigate the San Juan, carrying their service arms, and, when necessary, to carry out personnel relief and re-supply of police posts on the Costa Rican bank. This section describes Nicaragua's actions which have violated these rights.

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[378] "Conflict with the Nicaraguans due to tourism on the San Juan", *La República*, San José, 5 March 1994: Annexes, Vol 5, Annex 123.

[379] "…William Rojas, president of the Tourism Chamber of Sarapiquí, considered that the imposition of that charge discourages the presence of national tourism in the region and assured that in fact a number of excursions have been cancelled because of the elevated costs…": "Neighbours in the San Juan River feel defenceless", *La Nación*, San José, 22 June 2002: Annexes, Vol 5, Annex 177. See also "Tourist card affects us, the *ticos* say", *Barricada*, Managua, 13 March 1994: Annexes, Vol 5, Annex 127.

[380] "…The transit of tourists towards the Tortuguero Canals in Limon, has been notoriously reduced in the past few days, since many oppose paying the $34 demanded by Nicaragua for navigating on the San Juan River…": "Conflict over the San Juan scares away tourists", *La Nación*, San José, 8 November 2005: Annexes, Vol 5, Annex 192. See also Affidavit of Carlos Lao Jarquín, 27 January 2006: Annexes, Vol 4, Annex 84; Affidavit of Geovany Navarro Garro, 27 January 2006: Annexes, Vol 4, Annex 85; Affidavit of Pablo Gerardo Hernández Varela, 27 January 2006: Annexes, Vol 4, Annex 86; Affidavit of Santos Martín Arrieta Flores, 27 January 2006: Annexes, Vol 4, Annex 87; Affidavit of Marvin Hay-Gonzalez, 28 January 2006: Annexes, Vol 4, Annex 91; Affidavit of Windel Hodgson Hodgson, 28 January 2006: Annexes, Vol 4, Annex 93; Affidavit of Daniel Reese Wise, 29 January 2006: Annexes, Vol 4, Annex 95; and Affidavit of Ruben Lao Hernández, 17 February 2006: Annexes, Vol 4, Annex 103.

[381] See paragraphs 4.73-4.117.

5.110. On 14 July 1998 the Government of Nicaragua abruptly prohibited Costa Rican police officers from navigating the San Juan carrying their service arms.[382] This unprecedented measure interrupted navigation of Costa Rican police officers, which had been exercised over a substantial period in accordance with the Treaty of Limits, the Cleveland Award and the judgment of the Central American Court of Justice.

5.111. Traditionally, Costa Rican police navigated the San Juan, carrying their service arms and in uniform, without any difficulty and without restriction by Nicaragua. The navigation they carried out was to investigate crimes and wrongdoing in different parts of Costa Rican territory, as well as to carry out relief of personnel and re-supply of the different Costa Rican police posts in the area. Indeed they carried out joint tasks with the Nicaraguan Army on certain occasions.[383]

5.112. Some days after the first prohibition on 14 July 1998, Nicaragua's Vice President Enrique Bolaños was quoted as referring to the rules that Nicaragua would impose on Costa Rica for her police to navigate the San Juan River armed, thereby indicating that before 14 July 1998 no such restrictions existed.[384] A similar statement was made by the Nicaraguan Army Commander-in-Chief who, referring to the implementation of the Cuadra-Lizano Communiqué, was quoted as saying that before the conflict the use of arms by the Costa Rican Civil Guard was permitted for reasons of self-defence, since without them they would be exposed to the criminals: however, he said that "now any transit will be under strict Nicaraguan supervision."[385]

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[382] See Note of the Intendent Commander in service of Atlantic Command, Sarapiquí, Daniel Soto Montero, to Costa Rican Foreign Ministry, 14 February 2006: Annexes, Vol 6, Annex 240. The press also recorded this incident: "...the Nicaraguan army delivered an order impeding the Costa Rican police of the Northern zone to navigate the San Juan River with arms. ...The prohibition was ordered by Coronel Orlando Talavera, head of the Southern Military post (on the border with Costa Rica) with the support of Nicaraguan army leaders...": "Border dispute with Nicaraguans", *La Nación*, San José, 16 July 1998: Annexes, Vol 5, Annex 131. See also "Alemán: Ticos out", *El Nuevo Diario*, Managua, 17 July 1998: Annexes, Vol 5, Annex 132.

[383] See Affidavit of Carlos Luis Alvarado Sánchez, 27 January 2006: Annexes, Vol 4, Annex 88; Affidavit of Daniel Soto Montero, 27 January 2006: Annexes, Vol 4, Annex 89; Affidavit of Luis Angel Girón Angulo, 28 January 2006: Annexes, Vol 4, Annex 90; Affidavit of José Granados Montoya, 29 January 2006: Annexes, Vol 4, Annex 94; Affidavit of Ruben Lao Hernández, 17 February 2006: Annexes, Vol 4, Annex 103; and Affidavit of Victor Julio Vargas Hernández, 6 July 2006: Annexes, Vol 4, Annex 105.

[384] "Nicaragua hardens its position", *La Prensa*, Managua, 5 August 1998: Annexes, Vol 5, Annex 148. See also "*Ticos* will pay the price", *La Tribuna*, Managua, 6 August 1998: Annexes, Vol 5, Annex 151.

[385] "General Cuadra avoids commenting on the San Juan River", *La Tribuna*, Managua, 1 August 1998: Annexes, Vol 5, Annex 145.

5.113. Costa Rica's right to protect its commercial navigation on the San Juan with armed Revenue Guard vessels, as established by the Treaty of Limits and the Cleveland Award, includes the right to prevent criminal activities, such as smuggling of arms, drugs or immigrants. This task was performed by armed Revenue Guard vessels in the past. In modern times, and in accordance with Costa Rica's legal framework, these tasks are performed by the National Coastguard Service, the Fiscal Control Police, the Border Police and the Rural and Civil Guards, all navigating on Costa Rican official vessels. The evolution of the Costa Rican public forces in this context is detailed in **Appendix B**.

5.114. Costa Rica is also being prevented from exercising its right to safeguard the San Juan, as established in article IV of the 1858 Treaty of Limits—a right which is also a duty. Nicaragua's prohibition of navigation by police carrying service arms, as well as of police navigation for the purposes of relief of personnel and supply of police posts along the Costa Rican bank of the River, prevents Costa Rica from doing so.

5.115. Nicaragua's prohibition of Costa Rican police navigation on the San Juan prevents Costa Rican officers from maintaining surveillance of the River. Such surveillance, carried on from the bank of the River, is necessary to prevent its being used for criminal acts, such as trafficking of persons, drugs, arms and merchandise, and also to prevent security threats such as terrorist activities, which could pose a danger to the peace and security of both countries and the region.

5.116. For example, on 14 January 1999 the Nicaraguan police intercepted two vessels with 19 kilograms of cocaine near San Juan del Norte, on their way to Costa Rican territory, demonstrating that the area is a drug-trafficking route.[386]

5.117. Moreover, a press report of 13 June 2005 shows how the lack of police presence at the Nicaraguan border has opened Costa Rica's northern door to drug trafficking. Of the 330 kilometres of border shared by Nicaragua and Costa Rica, the Costa Rican Police have identified some 20 points of entry for arms and drug smuggling.[387] Many of them are in the San Juan border area.

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[386] "The capture of two boats with 19 kilograms of cocaine in the vicinity of the San Juan del Norte, in Nicaragua, finally convinced the authorities of that country of the existence of drug trafficking network on that water way .. The zone is a drug trafficking route, mainly because there is no police in the municipality of San Juan del Norte and since its inhabitants work on the coconut plantations, and when the harvest is finished, they work selling drugs that they find along the river": "Vessels investigated", *La Nación*, San José, 17 January 1999: Annexes, Vol 5, Annex 154.

5.118. The illegal traffic of arms is a major security concern, as Costa Rican territory is used by groups who traffic excess arms from the Nicaraguan civil war from Nicaragua to irregular groups in other countries using Costa Rica's territory.[388]

5.119. The prohibition of police navigation carrying service arms, as well as of police navigation for purposes of relief of personnel and re-supply of the police posts along the Costa Rican bank, prevents Costa Rica from defending the River.

5.120. Nicaragua's prohibition on navigation of the River by Costa Rica's official authorities also hinders Costa Rica from complying with its obligation to defend the common Bay of San Juan del Norte from external aggression, should it be necessary, as laid down in article IV of the Treaty of Limits.

5.121. By prohibiting the navigation of Costa Rican police carrying their service arms on the San Juan, it has been impossible for Costa Rica to carry out personnel relief and to re-supply police posts. This has made it difficult or impossible to provide proper protection to the Costa Rican territory and population. Indeed one post, that at La Cureña (as shown on **Sketch Map 7** opposite) had to be closed on September 1999 because it was impossible to resupply it.

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[387] "The Northern Border: An open door for drug dealers", *La Nación*, San José, 13 June 2005: Annexes, Vol 5, Annex 181.

[388] "Days earlier, the Panamanian Police confiscated two arsenals which were believed to have passed through Costa Rican territory. In Los Chiles, police not only pay special attention to boats navigating on the Frio River from San Carlos de Nicaragua, but also to those that pick up undocumented people at the edge of the San Juan River and then enter Costa Rican territory through the Medio Queso River. According to police reports, there are groups working between Costa Rica and Nicaragua that take advantage of arms caches that are buried after armed conflicts in the neighbouring country, in order to negotiate them with the Revolutionary Armed Forces (FARC) in Colombia... Edgar Hernández, Regional Director of the Costa Rican Police Force in Ciudad Quesada, and Gerardo Hernández, who works in Los Chiles, told *La Nación*, that they were concerned about the lack of surveillance on the San Juan. They added that there are areas that are entirely without any type of surveillance, such as Cureña and Remolinito de Sarapiqui. The lack of police is due to the July 1998 measure by Nicaragua forbidding armed Costa Rican police from navigating on the river. Both police chiefs agreed that such a weakness could be currently being taken advantage of by traffickers. In 1994, 1996 and 1999, the weapons used for the kidnappings that took place in Pital, Boca Tapada, Agua Zarcas and Cutris de San Carlos and most recently in Caño Zapota de Pococí, entered the country through the San Juan River, according to police": "Intense arms control", *La Nación*, San José, 25 September 2000: Annexes, Vol 5, Annex 165.

5.122. Transit on the San Juan is important not only to deliver supplies to police posts in the northern border area, but also to patrol 130 kilometres of border. Since July 1998, when Nicaragua prohibited the navigation of Costa Rican police carrying their service arms, the delivery of supplies and relief of personnel at the police posts of Delta Costa Rica, Puerto Lindo, Barra Colorado Sur and Barra Colorado Norte has become very difficult. From these posts it may take days on foot to reach other villages, for example in order to proceed with a judicial investigation or deliver a judicial order.[389] By contrast, a trip between Boca del Sarapiquí to Cureña (one and a half days in the dry season, longer in the wet) would take only 30 minutes by boat on the San Juan.[390]

5.123. Following the prohibition imposed by the Nicaraguan authorities on navigation of the River by police officers carrying their service arms, the Costa Rican inhabitants of the neighbouring towns and villages along the River began to report that security in the area was deteriorating, putting their personal safety at risk.[391]

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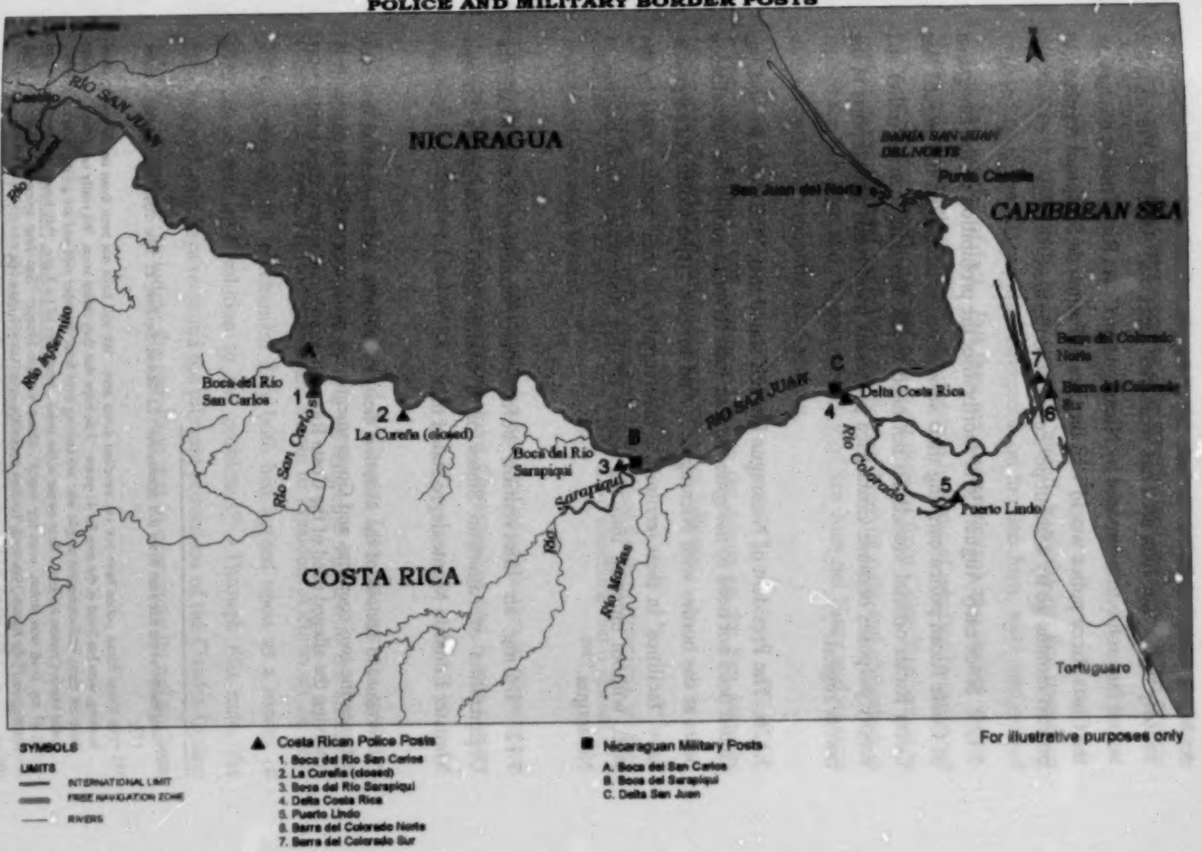
[389] For example, to reach guard post Delta 14 in Cureña de Sarapiqui was only possible in the dry season. It took seven hours, the last two kilometres had to be made on foot. Normally this journey would take two hours by boat from the main police post in the area (Comando Atlantico) located in Puerto Viejo de Sarapiqui. Another example of difficult access is Delta Costa Rica. The trip takes seven hours (instead of two) going through Puerto Viejo, Guapiles, Cariari, Las Palmitas and finally Puerto Lindo de Limon from which the remaining part of the trip is done by boat along the Colorado River. "Neighbours in the San Juan River feel defenceless", *La Nación*, San José, 22 June 2002: Annexes, Vol 5, Annex 177.

[390] Ibid.

[391] "The police retreat generates certain uneasiness. Farmer Rigoberto Acevedo, from San Antonio, Sarapiquí, stated that, although he understands the limitations that the authorities now have in travelling through the region, their presence is necessary. 'If there were an emergency here, we would not have anyone to rescue us', he warned. The presence of officers has been almost completely reduced in the settlements along the Costa Rican river bank, since the Nicaraguan government forbade – on July 15, 1998 – the navigation of armed Costa Rican police officers on the San Juan River': "San Juan: Calm and uneasiness", *La Nación*, San José, 4 July 1999: Annexes, Vol 5, Annex 155. "The inhabitants of settlements such as Palo Seco, Cureña or Fatima feel that their security has withered since July 15, 1998 when the Nicaraguan government forbade the Costa Rican police from transiting on the river with their service arms. 'Before, our police would visit us almost every day; now up to two months pass by and we do not see them', manifested Carlos Rugama Guzmán, a neighbour of Fatima. Transiting on the river is not only important for supplying 7 police guard posts, but also for guarding the Costa Rican river bank which comprises 130 kilometres of natural border": "Neighbours in the San Juan River feel defenceless", *La Nación*, San José, 22 June 2002: Annexes, Vol 5, Annex 177.

Sketch map 7

POLICE AND MILITARY BORDER POSTS


NICARAGUA
COSTA RICA
CARIBBEAN SEA
RIO SAN JUAN
Castillo
Rio
Rio Infiernito
BAHIA SAN JUAN DEL NORTE
San Juan del Norte
Punta Castilla
Boca del Rio San Carlos
Rio San Carlos
La Cureña (closed)
Boca del Rio Sarapiqui
Sarapiqui
Rio
Rio Marias
RIO SAN JUAN
Delta Costa Rica
Rio Colorado
Puerto Lindo
Barra del Colorado Norte
Barra del Colorado Sur
Tortuguero
A
B
C
1
2
3
4
5
6
7
SYMBOLS
LIMITS
INTERNATIONAL LIMIT
FREE NAVIGATION ZONE
RIVERS
▲ Costa Rican Police Posts
1. Boca del Rio San Carlos
2. La Cureña (closed)
3. Boca del Rio Sarapiqui
4. Delta Costa Rica
5. Puerto Lindo
6. Barra del Colorado Norte
7. Barra del Colorado Sur
■ Nicaraguan Military Posts
A. Boca del San Carlos
B. Boca del Sarapiqui
C. Delta San Juan

For illustrative purposes only

5.124. A press report of 22 June 2002 documents how the level of human security in the San Juan area has weakened since July 1998.[392] For instance, before the prohibition imposed by Nicaragua on Costa Rican police navigation, the Costa Rican police would visit the area of Fatima de Sarapiquí regularly; at present months go by without police visits to the area.[393]

5.125. Since early August 1998, shortly after the prohibition on the navigation of Costa Rican police carrying their service arms, Nicaragua has argued that Costa Rican official vessels do not need to use the San Juan for relief and supply purposes because Costa Rica possesses good roads and airports in the border region.[394]

5.126. The President of Nicaragua himself stated that: "the Costa Rican Civil Guard does not need to navigate the San Juan River to supply the surveillance posts at the border with Nicaragua." And further, "[t]he Costa Rican guards have 'facilities' in their territory to take supplies to their border posts by the land, without entering into the waters of that waterway, which belongs to Nicaragua."[395]

5.127. During an intervention before the Permanent Council of the Organization of American States on 8 March 2000, Nicaragua's Foreign Minister Eduardo Montealegre stated that:

> "Nicaragua, in honour of the historical ties of friendship and cooperation that exist between the two countries and Governments, has made every effort to cooperate in resolving the alleged need of the Costa Ricans to supply and relieve their border posts

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[392] "Neighbours of the San Juan River feel defenceless", *La Nación*, San José, 22 June 2002: Annexes, Vol 5, Annex 177.

[393] "The Costa Rican police have not yet travelled down here. We still have not seen them on the river", stated Sunsing, who has lived in the area for 41 years. 'I do hope that they return soon. We really need them here since there are many undocumented people who are coming over from the other side and are giving us much trouble', stated Maria Cristina Arrieta, a farm owner at the small community of La Tigra. 'My house was broken into and all of my food was stolen, even my watch', stated Ventura Monge: "San Juan spices up relationship with Nicaraguans", *La Nación*, San José, 10 July 2000: Annexes, Vol 5, Annex 154.

[394] "Special Commission in charge of the San Juan", *La Prensa*, Managua, 6 August 1998: Annexes, Vol 5, Annex 149.

[395] "Nicaragua: Alemán suggests Civil Guard not to navigate the San Juan," *Deutsche Presse Agentur*, Managua, 4 August 1998: Annexes, Vol 4, Annex 146.

on the right bank of the San Juan River via the aforementioned river itself, despite the fact that Costa Rica has easy access to these areas by land and by numerous airplane landing strips."[396]

5.128. These statements by Nicaragua, aimed at justifying the restriction imposed on Costa Rican police navigation on the San Juan, were and are not correct as a matter of fact. But they are also irrelevant as a matter of law. Nicaragua has sought to present the question in terms of whether re-supply of police posts is a "need", instead of a *right* derived from Costa Rica's right to protect its commercial navigation on the San Juan, its right and obligation to defend the San Juan and the common Bay of San Juan del Norte and its right and obligation to safeguard the San Juan.

5.129. On 3 August 1998, during a visit to the towns on the San Juan the Nicaraguan President Arnoldo Alemán stated as follows:

> "… if we need to make use of the institution of the armed forces of Nicaragua, we shall make use of them… The sovereignty of a nation is not something that is discussed, it is defended with arms in hand."[397]

This statement was made against the background of opposition in Nicaraguan political circles to the Cuadra-Lizano Joint Communiqué and it was clearly intended to intimidate Costa Rica.

5.130. As has already been explained in Chapter 3, an attempt was made by Costa Rica in mid-2000 to try to find an amicable solution to the situation. Costa Rican President Rodriguez sent a note to President Alemán on 28 June 2000, proposing the mechanism they both had agreed upon as a means of reaching a definitive solution to the problem.[398] Through this note, the President of Costa Rica re-stated the relevant provisions of the Cuadra-Lizano Joint Communiqué, including the provision that in exercising its rights Costa

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[396] Nicaraguan Foreign Minister, Eduardo Montealegre, Statement to the Permanent Council of the Organization of American States, 8 March 2000, OEA/Ser.G CP/ACTA 1224/00: Annexes, Vol 6, Annex 229.

[397] "Alemán: I could take up the arms", *El Nuevo Diario*, Managua, 30 July 1998: Annexes, Vol 5, Annex 140.

[398] President of Costa Rica, Miguel Ángel Rodríguez Echeverria, to President of Nicaragua, Arnoldo Alemán Lacayo, 28 June 2000: Annexes, Vol 3, Annex 64.

Rica would be willing to inform the Nicaraguan authorities of its passage through the River, as had been the practice immediately prior to 14 July 1998.[399]

5.131. In his response, the President of Nicaragua sought to subject Costa Rica's police navigation to Nicaragua's authorisation or "acquiescence".[400]

5.132. On 29 July 2000 the Costa Rican President sent a second note to Nicaragua's President, again seeking the re-establishment of "the *modus operandi* that existed until July 1998, in which the vessels carrying members of the Costa Rican police could navigate on the lower course of the river, having previously informed the Nicaraguan authorities in each case."[401] The note further expressed concern that

> "...in the conversations held, subsequent to your letter, between the Nicaraguan Minister of Defence and the Costa Rican Minister of Public Security with a view to putting these demonstrations of willingness into practice, it has still not been possible to reach an agreement on the reestablishment of the *modus operandi*, or on the procedures by which Costa Rica, in each case, would inform Nicaragua, respectively, of the transit of Costa Rican police on the lower San Juan...."[402]

5.133. The President of Nicaragua responded on 3 August 2000, once again denying Costa Rica's navigational rights, since he insisted on "the acquiescence" of the Nicaraguan authorities as a prior requirement to allow Costa Rican police navigation.[403] He referred to "pending situations that require, on our part, the concurrence of other Powers of State, in accordance with our internal legislation."[404]

5.134. Thus Nicaragua asserted that nothing less than express authorisation was required in order for Costa Rican official authorities to navigate the River, an authorisation that had to be granted by Nicaragua's National Assembly.[405] Costa Rica could not accept this proposal, which would entail denying Costa Rica's right for its authorities to navigate the San Juan in the terms established by the international instruments. The imposition of any system of prior authorisation would mean that Costa Rica's navigation would be subject to permission, a permission which could be denied by Nicaragua at any time.

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[399] Ibid.

[400] President of Nicaragua, Arnoldo Alemán Lacayo, to President of Costa Rica, Miguel Ángel Rodríguez, 29 June 2000: Annexes, Vol 3, Annex 65.

[401] President of Costa Rica, Miguel Ángel Rodriguez Echeverria, to President of Nicaragua, Arnoldo Alemán Lacayo, 29 July 2000: Annexes, Vol 3, Annex 66.

[402] Ibid.

[403] President of Nicaragua, Arnoldo Alemán Lacayo, to President of Costa Rica, Miguel Ángel Rodríguez, 3 August 2000: Annexes, Vol 3, Annex 67.

[404] Ibid.

5.135. Subsequently, certain other incidents occurred in which Nicaragua further restricted Costa Rica's enjoyment of its navigational rights.

5.136. In 2005, in response to Costa Rica instituting these proceedings before the Court, the Nicaraguan Government announced that in order to enforce the prohibition on Costa Rica's official authorities to navigate the San Juan, the presence of the Nicaraguan army in the area would be reinforced. The Nicaraguan press reported on 1 October 2005 that the Nicaraguan authorities had commanded their Army in the San Juan to "intercept, capture or open fire… in case a vessel with Costa Rican armed guards is sighted."[406] On 2 October 2005 it was reported by the Nicaraguan Press that the President of Nicaragua commanded the Nicaraguan Army that "under no circumstance" could armed Costa Rican guards navigate that waterway.[407] These actions and statements clearly aggravate the dispute and constitute a continued denial of Costa Rica's rights.

E. Breaches of other Related Rights

5.137. Subsequently, certain other incidents occurred in which Nicaragua further restricted Costa Rica's enjoyment of its navigational rights.

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[405] In October 2000, the Nicaraguan Government announced to the media that they would present before the National Assembly an official request to delegate on the Nicaraguan army the responsibility of granting permission for the navigation of Costa Rican armed officials in the San Juan River: "Permission will be requested from the Congress for the navigation of armed Costa Rican police", *ACAN-EFE Press Agency*, Madrid, 12 October 2000: Annexes, Vol 5, Annex 168.

[406] "The Army guards the River", *La Prensa*, Managua, 1 October 2005: Annexes, Vol 5, Annex 182.

[407] "In alert", *La República*, San José, 2 October 2005: Annexes, Vol 5, Annex 183.

(1) The right to land at any part of the Nicaraguan bank of the River where navigation is common

5.138. Under article VI of the Treaty of Limits, Costa Rican vessels have a perpetual right of free navigation including the right to land at any part of the Nicaraguan bank of the San Juan where navigation is common. In the words of the Central American Court of Justice, this entails "permanent rights of free navigation … and the right for her vessels to moor at all points along either bank, exempt from the imposition of any charges".[408] Such free access implies the right to stop or not to stop, to moor or not to moor – and is quite inconsistent with an obligation to stop in order to pay taxes, as is the present situation.

(2) Facilitation of traffic on the River

5.139. But independently of particular violations of this character, detailed above, there is a more fundamental point. The purpose of the transit regime on the San Juan is to facilitate traffic, not to deter or prevent it. The parties expressed this underlying objective in juridical terms in concluding article 1 of the 1956 Agreement, whereby they promised to

> "collaborate to the best of their ability…in particular, in order to facilitate and expedite traffic… on the San Juan River within the terms of the Treaty of 15 April 1858 and its interpretation given by arbitration on 22 March 1888, and also to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other."[409]

5.140. The evidence set out above shows that, far from collaborating, Nicaragua is doing everything it can to prevent Costa Rican traffic on the San Juan – with the consequence that the waterway is these days largely empty of traffic. Nicaragua's conduct is the antithesis of that required by article 1 of the 1956 Agreement and constitutes – independently of individual instances – a violation of that treaty provision.

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[408] Annexes, Vol 2, Annex 21, 219.

[409] Costa Rica-Nicaragua, 1956 Agreement, article 1: Annexes, Vol 2, Annex 24.

(3) Customary right to fish in favour of residents of the Costa Rican bank

5.141. Since the creation of the Province of Costa Rica by the Spanish Royal Crown in 1540, a right to fish in the waters of the San Juan River was established: it was expressly stipulated that as between the two Provinces of Costa Rica and Nicaragua, "the navigation and fishing and other uses of the said river shall be common".[410] Ever since, the residents, both Costa Rican and Nicaraguan, along the banks of the San Juan have fished there for subsistence. So far as Costa Ricans are concerned, Nicaragua has breached this long standing right.

5.142. After Costa Rica lodged the present Application before the Court, Nicaraguan officials have banned Costa Rican residents on the southern bank of the River from all fishing on the River.[411] Residents who attempt to fish in the River now face detention and the seizure of their belongings, including their boats,[412] lines and any fish they may have caught. These measures have been taken by Nicaragua against residents of the Costa Rican bank of the San Juan in the area of Boca de San Carlos. Erick Maikol Martinez Lopez's affidavit clearly sums up the situation:

> "…He says that all his life he and his family have fished in the San Juan River for feeding and that, until recently, they never had problems to do it… Since some time ago, particularly since the situation with Nicaragua aggravated because of the navigation on the San Juan River, the Nicaraguan authorities have banned fishing in the River. He says that he knows that they do not allow fishing and that family members and friends have been affected, since they have been detained and their belongings have been seized, including the fish, the lines and even the boat, which has affected them financially as they are poor people… He continues to indicate that just today members of the Nicaraguan Army told him that he will not be allowed the passage through the San Juan River, even paying the nine dollars that regularly are charged for navigating on said River… Finally, he indicates that many neighbours prefer not to denounce the abuses against them by the Nicaraguan authorities for fear that they will be prohibited the navigation or be detained…"[413]

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[410] See paragraph 2.08.

[411] As confirmed by Affidavit of Leonel Morales Chacón, 6 July 2006: Annexes, Vol 4, Annex 106; Affidavit of Erick Maikol Martínez López, 6 July 2006: Annexes, Vol 4, Annex 107; Affidavit of Victor Julio Vargas Hernández, 6 July 2006: Annexes, Vol 4, Annex 105; Affidavit of Josefa Alvarez Aragón, 6 July 2006: Annexes, Vol 4, Annex 109; and Affidavit of José Moreno Rojas, 6 July 2006: Annexes, Vol 4, Annex 108.

[412] Affidavit of Josefa Alvarez Aragón, 6 July 2006: Annexes, Vol 4, Annex 109.

[413] Affidavit of Erick Maikol Martínez López, 6 July 2006: Annexes, Vol 4, Annex 107.

5.143. Furthermore, Nicaragua has seized personal belongings which are associated with fishing, such as lines and fishing rods, even if the person or persons have not fished at all in the San Juan.[414] The residents of the Costa Rican bank are powerless against these actions of the Nicaraguan authorities and are afraid to fish for subsistence, given the grave consequences that they face. This conduct of Nicaragua not only violates the long standing right of the local residents to fish, but also diminishes and threatens the livelihood and subsistence of entire communities on the Costa Rican bank.

F. Conclusions

5.144. This Chapter has demonstrated that Nicaragua has violated and continues to violate the obligation to respect Costa Rica's perpetual right of free navigation over the portion of the San Juan where it is a riparian State, including especially the right of navigation for the purposes of commerce, without being subject to charges of any kind or duties, unless levied by mutual consent of both Governments. In particular it has done so:

(1) by imposing charges on Costa Rican vessels and/or their passengers, in the form of a departure clearance certificate, an "immigration fee" (one to enter and another to exit the River) and a "tourist card" or "transit permit";

(2) by imposing timetables to navigation, requesting Costa Rican vessels to obtain permission to navigate the River, to stop at the Nicaraguan bank and to fly the Nicaraguan flag;

(3) by requiring passengers to carry their passports with a Nicaraguan visa;

(4) by conducting searches of the passengers and their possessions; and

(5) by denying that the transportation of persons, including tourism, as well as navigation for the purpose of communication between different points of Costa Rican territory, either by individuals or by Costa Rican officials, are included within the scope of the navigation with the purposes of commerce.

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[414] Affidavit of Leonel Morales Chacón, 6 July 2006: Annexes, Vol 4, Annex 106.

5.145. It has also been demonstrated that:

(6) By preventing Costa Rican official vessels transporting members of the police with their regular arms with the purpose of re-supply and relief of the police posts along the Costa Rican bank of the San Juan and by denying that such Costa Rican activity is a right, Nicaragua has violated and continues to violate the obligation to respect Costa Rica's right of navigation with the following purposes:

(i) protection of commerce and of revenue control;
(ii) safeguarding or custody of the San Juan; and
(iii) defence of the common bay of San Juan del Norte.

(7) By preventing residents of the Costa Rican bank of the San Juan, both from that bank and within the waters of the San Juan along that bank, to fish for subsistence purposes, Nicaragua has violated and continues to violate their customary right to fish for subsistence purposes.

(8) Through its overall conduct with regard to the Costa Rican navigational and related rights, and its disregard to the relevant applicable instruments, Nicaragua has violated and continues to violate the obligation to make its best efforts to collaborate with Costa Rica in order to facilitate traffic on the San Juan and facilitate transport services provided by enterprises of Costa Rica in the territory of Nicaragua, including the waters of the San Juan.

Chapter 6

The Remedies sought by Costa Rica

A. Introduction

6.01. Chapter 5 of this Memorial demonstrated that Nicaragua has violated its obligations with regard to the navigational and related rights of Costa Rica on the San Juan. As set out in the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission: "Every internationally wrongful act of a State entails the international responsibility of that State."[415] The present chapter formulates the remedies sought by Costa Rica as a consequence of the internationally wrongful acts committed by Nicaragua. They consist of:

(1) a declaration of the extent of Nicaragua's violations of its obligations;
(2) the cessation of the internationally wrongful acts that continue to be committed by Nicaragua;
(3) reparation by Nicaragua for damage caused as a result of those violations; and
(4) appropriate guarantees of non-repetition by Nicaragua of its wrongful conduct.

B. Declaration of violations of Nicaragua's obligations

6.02. Costa Rica requests the Court to adjudge and declare that Nicaragua is in breach of its international obligations as particularised in Chapters 4 and 5 of this Memorial, in denying to Costa Rica the free exercise of its rights of navigation and associated rights on the San Juan. Costa Rica's primary purpose in instituting these proceedings has been to obtain a declaratory judgment that its rights have been violated by Nicaragua. Such a declaration, made by the principal judicial organ of the United Nations, will amount to a final determination of those rights and will oblige Nicaragua to cease its wrongful conduct, which has consisted in denying those rights and preventing Costa Rica from exercising them. As the Permanent Court of International Justice has said, such a declaration serves:

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[415] Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission at its fifty-third session (2001), Art 1, annexed to General Assembly, Resolution 56/83, 12 December 2001 (hereinafter "ILC Articles on State Responsibility").

> "to ensure recognition of a situation at law, once and for all and with binding force as between the Parties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned."[416]

6.03. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has violated:

(a) the obligation to allow all Costa Rican vessels and their passengers to navigate freely on the San Juan for purposes of commerce, including communication and the transportation of passengers and tourism;

(b) the obligation not to impose any charges or fees on Costa Rican vessels and their passengers for navigating on the River;

(c) the obligation not to require persons exercising the right of free navigation on the River to carry passports or obtain Nicaraguan visas;

(d) the obligation not to require Costa Rican vessels and their passengers to stop at any Nicaraguan post along the River;

(e) the obligation not to impose other impediments on the exercise of the right of free navigation, including timetables for navigation and conditions relating to flags;

(f) the obligation to allow Costa Rican vessels and their passengers while engaged in such navigation to land on any part of the bank where navigation is common without paying any charges, unless expressly agreed by both Governments;

(g) the obligation to allow Costa Rican official vessels the right to navigate the San Juan, including for the purposes of re-supply and exchange of personnel of the border posts along the right bank of the River with their official equipment, service arms and ammunition, and for the purposes of protection as established in the relevant instruments, and in particular article 2 of the Cleveland Award;

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[416] *Interpretation of Judgments Nos. 6 and 8 (Factory at Chorzów)*, P.C.I.J. Series A, No. 13 (1926), p. 20.

(h) the obligation to facilitate and expedite traffic on the San Juan, within the terms of the Treaty of 15 April 1858 and its interpretation by the Cleveland Award of 1888, in accordance with Article I of the bilateral Agreement of 9 January 1956;

(i) the obligation to permit riparians of the Costa Rican bank to fish in the River for subsistence purposes.

C. Cessation of continuing internationally wrongful conduct

6.04. As a consequence of the determination of the unlawful conduct of Nicaragua as set out above, Nicaragua is obliged to cease all internationally wrongful conduct which has a continuing character. According to the ILC's Articles on State Responsibility:

> "The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation."[417]

6.05. The Court has emphasised the obligation to cease internationally wrongful acts having a continuing character. For example, in the *Military and Paramilitary Activities in and against Nicaragua*, the Court decided:

> "that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations."[418]

6.06. As the International Law Commission recalled in its commentary to article 30:

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[417] Article 14(2). See also article 30(a) of the Articles on State Responsibility.

[418] I.C.J. Reports 1986, p. 149, dispositif para (12)

"the Tribunal in the *Rainbow Warrior* arbitration stressed 'two essential conditions intimately linked' for the requirement of cessation of wrongful conduct to arise, 'namely that the wrongful act has a continuing character and that the violated rule is still in force at the time in which the order is issued'. While the obligation to cease wrongful conduct will arise most commonly in the case of a continuing wrongful act, article 30 also encompasses situations where a State has violated an obligation on a series of occasions, implying the possibility of further repetitions. The phrase 'if it is continuing' at the end of subparagraph (a) of the article is intended to cover both situations."[419]

6.07. At the time of the filing of the present Memorial, Nicaragua continues to infringe the obligations enumerated above and, of course, these obligations are still in force.

D. Full Reparation

6.08. Evidently:

"[i]t is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself."[420]

6.09. Consequently, the Court is requested to determine the reparation which must be made by Nicaragua. As the Permanent Court also recalled:

"[t]he essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[421]

6.10. In the present proceedings, reparation takes the form of restitution and compensation.

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[419] United Nations, *Report of the International Law Commission on the work of its Fifty-third session*, GAOR, Fifty-sixth session, Supplement No. 10 (A/56/10, 2001), 216.

[420] *Factory at Chorzów, Jurisdiction*, P.C.I.J., Series A, No. 9 (1926), p. 21.

[421] *Factory at Chorzów, Merits*, P.C.I.J., Series A, No. 17 (1928), p. 47.

(1) Restitution

6.11. Costa Rica essentially looks for restitution in the form of restoration of the situation prior to the Nicaraguan breaches referred to above. According to article 35 of the ILC Articles on State Responsibility:

> "A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:
>
> (a) is not materially impossible;
> (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation."

6.12. In these proceedings restitution signifies the reestablishment of the full enjoyment by Costa Rica of its navigational and related rights over the San Juan as elaborated in Chapter 4 of this Memorial. Clearly, neither of the two exceptions for excluding restitution envisaged in article 35 of the ILC Articles is present here.

6.13. This form of *restitutio in integrum* includes the abrogation of all legislative and administrative measures taken by Nicaragua which contradict or deny the obligations enumerated above.

(2) Compensation

6.14. Insofar as restitution does not constitute comprehensive reparation for the injuries caused by Nicaraguan wrongful acts, Costa Rica seeks pecuniary compensation from Nicaragua for all damages caused by the unlawful acts that have been committed or may yet be committed.

6.15 In particular, compensation should include, *inter alia*:

(a) the loss caused to Costa Rican vessels arising from the so-called "departure clearance certificate" imposed on Costa Rican vessels navigating the San Juan River;

(b) the loss caused to Costa Rica for the charge of tourism cards, transit permits and immigration fees imposed on Costa Rican vessels navigating the San Juan River;

(c) the loss caused to Costa Rica for the charge of a consular visa to any Costa Rican citizen seeking to navigate the San Juan River;

(d) the losses caused to Costa Rica for the further expenses incurred by Costa Rican citizens, the consequential losses in their activities, as well as all other material and moral damage suffered by them;

(e) the expenses and costs incurred by Costa Rica as a result of Nicaragua's violations causing Costa Rica to be unable to resupply the police posts along the Costa Rican bank through the San Juan River;

(f) interest at prevailing rates from the time the claim arose until payment of the judgment; and

(g) such other relief as the Court may deem appropriate.

6.16. In accordance with the practice stemming from previous case law,[422] Costa Rica respectfully requests the Court to reserve the determination of the scope of compensation due from Nicaragua to a subsequent phase of this case. This is particularly required in the present proceedings because Nicaragua's breaches are still continuing. As the Court stated in the *Hostages Case*:

> "As to the consequences of this finding [the breaches of Iran's obligations under the 1961 and 1963 Vienna Conventions] it clearly entails an obligation on the part of the Iranian State to make reparation for the injury thereby caused to the United States. Since however Iran's breaches of its obligations are still continuing, the form and amount of such reparation cannot be determined at the present date."[423]

6.17. Consequently, Costa Rica requests that the Court declare that Costa Rica is entitled to compensation for all injuries caused by Nicaragua's unlawful acts, reserving its right to submit a concrete claim as to the amount, as well as evidence of damages caused, at a later stage. This is consistent with the Court's holding in the *Fisheries Jurisdiction* case (*Federal Republic of Germany v Iceland*):

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[422] Ibid, 64; *Corfu Channel, Merits*, I.C.J. Reports 1949, p. 26; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits*, I.C.J. Reports 1986, p. 142 (para 284); *Armed Activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, judgment of 19 December 2005, dispositif para (14).

[423] *United States Diplomatic and Consular Staff in Tehran*, I.C.J. Reports 1980, pp. 41-42 (para 90).

> "It is possible to request a general declaration establishing the principle that compensation is due, provided the claimant asks the Court to receive evidence and to determine, in a subsequent phase of the same proceedings, the amount of damage to be assessed."[424]

E. Assurances and guarantees of non-repetition

6.18. Costa Rica also respectfully requests the Court to determine, in accordance with article 30(b) of the ILC Articles on State Responsibility, that Nicaragua provide assurances and guarantees against repetition of its international wrongful acts.

6.19. According to the International Law Commission,

> "[a]ssurances and guarantees are concerned with the restoration of confidence in a continuing relationship, although they involve much more flexibility than cessation and are not required in all cases. They are most commonly sought when the injured State has reason to believe that the mere restoration of the pre-existing situation does not protect it satisfactorily."[425]

6.20. The Court has admitted that in some circumstances such assurances and guarantees should be granted. In the *LaGrand* Case, the Court held:

> "that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1(b) [of the 1963 Vienna Convention on Consular Relations] must be regarded as meeting Germany's request for a general assurance of non-repetition."[426]

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[424] *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland),. Merits*, I.C.J. Reports 1964, p. 204 (para 66). Equally, in *Military and Paramilitary Activities in and against Nicaragua*, the Court stated: "The opportunity should be afforded Nicaragua to demonstrate and prove exactly what injury was suffered as a result of each action of the United States which the Court has found contrary to international law." I.C.J. Reports 1986, pp. 142-143 (para 284).

[425] United Nations, *Report of the International Law Commission on the work of its Fifty-third session*, GAOR, Fifty-sixth session, Supplement No. 10 (A/56/10, 2001), 219.

[426] *La Grand (Germany v. United States of America)*, I.C.J. Reports 2001, p. 466, 512 (para 123).

6.21. Equally, in the *Case concerning armed activities on the territory of the Congo*, the Court took the view that

> "the commitments assumed by Uganda under the Tripartite Agreement [of 26 October 2004] must be regarded as meeting the DRC's request for specific guarantees and assurances of non-repetition."[427]

6.22. The record of Nicaraguan denials or rejections of the relevant instruments related to the San Juan and its violations of Costa Rican rights at different times shows that Costa Rica "has reason to believe that the mere restoration of the pre-existing situation does not protect it satisfactorily". This is the third time in history that Costa Rica has been obliged to have recourse to adjudication (arbitration by President Cleveland, the Central American Court of Justice and this Court) in order to obtain recognition and respect of its rights as first established by the Treaty of Limits.

6.23. The assurances and guarantees of non-repetition sought by Costa Rica include a statement by Nicaragua to this effect by means of its own choosing, and the abrogation of those legislative and administrative measures taken by Nicaragua that, if continued in force, would constitute a violation of any of the abovementioned obligations.

F. Conclusions

6.24. Accordingly, Costa Rica seeks the following remedies in the present proceedings:

(1) that the Court adjudge and declare that Nicaragua is in breach of its international obligations as referred to in Chapters 4 and 5 of this Memorial and enumerated in paragraph 6.03 above;

(2) the cessation by Nicaragua of all the breaches of the obligations referred to in paragraph 6.03 above having a continuing character;

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[427] *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, judgment of 19 December 2005, para 256.

(3) the obligation of Nicaragua to make reparation to Costa Rica for all injuries caused to Costa Rica by the breaches of Nicaragua's obligations referred to above, in the form of (a) the restoration of the situation prior to the Nicaraguan breaches and (b) compensation in an amount to be determined in a separate phase of these proceedings; and

(4) appropriate assurances and guarantees on the part of Nicaragua that it shall not repeat its unlawful conduct.

SUBMISSIONS

1. For these reasons, and reserving the right to supplement, amplify or amend the present submissions, Costa Rica requests the Court to adjudge and declare that Nicaragua is in breach of its international obligations in denying to Costa Rica the free exercise of its rights of navigation and related rights on the San Juan.

2. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has violated:

(a) the obligation to allow all Costa Rican vessels and their passengers to navigate freely on the San Juan for purposes of commerce, including communication and the transportation of passengers and tourism;
(b) the obligation not to impose any charges or fees on Costa Rican vessels and their passengers for navigating on the River;
(c) the obligation not to require persons exercising the right of free navigation on the River to carry passports or obtain Nicaraguan visas;
(d) the obligation not to require Costa Rican vessels and their passengers to stop at any Nicaraguan post along the River;
(e) the obligation not to impose other impediments on the exercise of the right of free navigation, including timetables for navigation and conditions relating to flags;
(f) the obligation to allow Costa Rican vessels and their passengers while engaged in such navigation to land on any part of the bank where navigation is common without paying any charges, unless expressly agreed by both Governments;
(g) the obligation to allow Costa Rican official vessels the right to navigate the San Juan, including for the purposes of re-supply and exchange of personnel of the border posts along the right bank of the River with their official equipment, including service arms and ammunition, and for the purposes of protection as established in the relevant instruments, and in particular article 2 of the Cleveland Award;
(h) the obligation to facilitate and expedite traffic on the San Juan, within the terms of the Treaty of 15 April 1858 and its interpretation by the Cleveland Award of 1888, in accordance with Article 1 of the bilateral Agreement of 9 January 1956;
(i) the obligation to permit riparians of the Costa Rican bank to fish in the River for subsistence purposes.

3. Further, the Court is requested to adjudge and declare that by reason of the above violations, Nicaragua is obliged:

- **(a) immediately to cease all the breaches of obligations which have a continuing character;**
- **(b) to make reparation to Costa Rica for all injuries caused to Costa Rica by the breaches of Nicaragua's obligations referred to above, in the form of the restoration of the situation prior to the Nicaraguan breaches and compensation in an amount to be determined in a separate phase of these proceedings; and**
- **(c) to give appropriate assurances and guarantees that it shall not repeat its unlawful conduct, in such form as the Court may order.**

Ambassador Edgar Ugalde Alvarez
Agent of Costa Rica
29 August 2006

Appendix A.

The status of the San Juan River in international law

A1. As shown in Chapter 4 of this Memorial, Costa Rica's navigational and related rights stem from the relevant treaties, in particular the Treaty of Limits, as well as binding interpretations of that Treaty made in the Cleveland Award and by the Central American Court of Justice. These instruments apply to the San Juan irrespective of any theory about distinctions to be drawn between "national" and "international" rivers.

A2. By contrast, Nicaragua has repeatedly qualified the San Juan as a purely "national river", and this characterisation has then been used as a main argument to reject or minimise Costa Rica's navigational and related rights that are at stake in the present proceedings. For the sake of completeness, Costa Rica attaches this Appendix to its Memorial in order to demonstrate that the San Juan is governed by an international regime. The second part of this Appendix will analyze the impact of customary international law on the navigational and related rights of Costa Rica.

I. The San Juan is an international river

A3. As mentioned in Chapter 2, the San Juan was the main means of communication to the Atlantic Ocean for both Costa Rica and Nicaragua during the 19th century. Indeed, the River had been one of the most important international means of communication in Central America and was used by vessels from different flags and continents. Before the entry into force of the Treaty of Limits, neither State possessed exclusive jurisdiction over the River. Pursuant to the Treaty of Limits, Nicaragua obtained sovereignty over the entire waters of the San Juan. This decision was taken in the context of the envisaged construction of an inter-oceanic canal by way of Lake Nicaragua, as explained in Chapter 2 above.[428]

A4. As the record reveals, Costa Rica at all times since the entry into force of the Treaty of Limits has recognised that the northern bank, the waters and the bed of the San Juan belong to Nicaragua.

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[428] See paragraph 2.16.

A5. Although there exist other examples of contiguous rivers where the boundary is defined along one bank, this is not the situation normally encountered. In general, the boundary is established in such cases using either the *thalweg* or the median line, or a combination of both. In the literature, it has been explained that the method of defining the boundary along one bank was used in earlier times, that it is ill-adapted to technical requirements and that it leads to unjust or inequitable results.[429] In general, when this kind of boundary is established with regard to navigational rivers, the parties agree to grant freedom of navigation to the riparian State other than the sovereign.[430] The general drawbacks of this method of delimitation are such that in some cases, States agreed to modify such early delimitations, to replace them with the *thalweg* or the median line.[431]

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[429] Thus P de Lapradelle qualified the boundary on one bank as the "limite fluviale impérialiste par excellence", *La frontière. Etude de droit international* (Paris: Les éditions internationales, 1928), 95; see also LJ Bouchez, "The Fixing of Boundaries in International Boundary Rivers", (1968) 12 *ICLQ* 791; C Rousseau, *Droit international public* (Paris: Sirey, 1977), vol. III, 253-4; C de Visscher, *Problèmes de confins en droit international public* (Paris: Pedone, 1969), 58-9; L Caflisch, "Règles générales du droit des cours d'eau internationaux", (1989-VII) 219 *Recueil des Cours* 69; SC McCaffrey, *The Law of International Watercourses. Non-Navigational Uses* (Oxford: Oxford University Press, 2001), 71, fn 88; SMA Salman, "The Present State of Research Carried Out by the English-speaking Section of the Centre for Studies and Research", in Centre for Studies and Research in International Law and International Relations of The Hague Academy of International Law, *Water Resources and International Law (2001)* (The Hague: Kluwer, 2002), 79-80.

[430] See, e.g.: Treaty of Peace between Austria and France, 17 October 1797, art 11, 54 CTS 157, 161; Arrangement between France, Great Britain and Russia and Turkey for the Definitive Settlement of the Continental Boundaries of Greece, 21 July 1832, art VI, 82 CTS 477, 483; Treaty of Peace between Russia and Turkey with regard to the Danube, 14 September 1829, 80 CTS 83, esp. Art III; Agreement between France and Liberia, 18 September 1907, art III, 101 BFSP 1013, 3 NRG (3rd series) 1004; Treaty between Afghanistan and Great Britain for the Establishment of Neighbouring Relations, 2 November 1921, art 2, 14 LNTS 67; Convention between Great Britain and the Netherlands respecting the delimitation of the boundary in Borneo, 26 March 1928, art 2, 108 LNTS 332, 334; Treaty between Irak and Iran concerning the boundary along the Shatt-all-Arab, 4 July 1937, 190 LNTS 242. Even in cases when the river is a non-navigable one, some rights to the non-sovereign riparian are also recognized: see, e.g., Boundary Convention between Basle and France concerning the Doubs, 20 June 1780, 47 CTS 331. esp art I; Treaty of Cession and Boundaries between Sardinia and Switzerland with regard to the Foron, 16 March 1816, 65 CTS 447, esp art I.

[431] Thus the Treaty of 16 June 1803 amongst Sardinia, Switzerland and Geneva, 65 CTS 447 moved the boundary located on one bank of the Rhone (allocating its waters to Sardinia) to the median line. The Treaty of 30 November 1909 between Brazil and Uruguay modified the boundary located at the Uruguayan banks of the Yaguaron river and the Lake of Merim, moving them to the thalweg of the former and to a longitudinal line in the latter: 209 CTS 419. The agreement of 4 September 1913 between France and Great Britain modified the boundary following the bank of the Uldafu and Biwa rivers by virtue of the agreement of 25 June 1903 to the thalweg. The boundary followed the left bank of the Moa was kept, but it was recognized that the inhabitants of the two banks have equal rights of fishing in this part: 9 Martens, RGT, 3rd series, 802. Other examples include the Pruth (Treaty of Berlin, 13 July 1878, 153 CTS 171, 187, art XLV), the Shatt -al-Arab (Iran-Iraq, Treaty of 13 June 1975, 1017 UNTS 55); the Sabine (boundary fixed by a treaty between Spain and the United States on the western bank in 1819 and moved to the median line by an agreement between Mexico and the United States, quoted by F Schroeter, "Les systèmes de délimitation dans les fleuves internationaux", (1992) 38 AFDI 956-957, according to the Russian interpretation, the Usury/Amour (the Treaty between the Russian Federation and the People's Republic of China of 14 October 2004, fixes the boundaries on the median line of the main channel of navigation where the rivers are navigable, and on the median line where they are not. Available in Russian at: http://www.akdi.ru/gd/proekt/096937GD.SHTM). At the beginning of the 20th century, Argentine Foreign Affairs Minister Zeballos claimed that, by virtue of the uti *possidetis iuris* of 1810, the entire waters of the River Plate (Río de La Plata) belonged to Argentina (JA Barberis, "Régimen jurídico internacional del Río de La Plata" in JA Barberis and EA Pigretti, *Régimen jurídico del Río de La Plata* (Buenos Aires: Abeledo Perrot, 1970), 52-53). The Treaty Concerning the Río de La Plata and the Corresponding Maritime Boundary (Uruguay-Argentina), 19 November 1973, entered into force 12 February 1974, 1295 UNTS 306, divided the waters of the river between the two riparian States. In the *Frontier Dispute (Benin/Niger)* case, Benin unsuccessfully argued that the boundary ran along the left bank of the Niger River: *Frontier Dispute (Benin/Niger), Judgment*, I.C.J. Reports 2005, pp. 121-122, paras. 51-56.

A6. Nicaragua argues that the San Juan is a "national river".[432] This expression is used as a means of denying or restricting Costa Rican rights. Furthermore, Nicaragua wrongly contends that, through the category of "international river", Costa Rica aims at placing the San Juan under a regime of shared sovereignty.[433]

A7. Two simple and obvious considerations refute the characterisation of the San Juan as a purely "national" river. First, the San Juan is a waterway regulated by international instruments. Second, the San Juan is a navigational waterway whose banks belong to two different States. Article 6 of the Cañas-Jerez Treaty states this explicitly, referring to "the portion of the bank of the San Juan, which is hereby declared to belong to Costa Rica". These two elements are sufficient to establish the San Juan as an international river.[434]

A8. The characterization of the San Juan as an international river is in conformity with the position of the Permanent Court of International Justice in interpreting article 331 of the Treaty of Versailles. It said:

> "The actual wording of Article 331 shows that internationalization is subject to two conditions: the waterway must be navigable and must naturally provide more than one State with access to the sea. These are the two characteristics—and this observation, as will be seen, is not without importance in relation to the question to be answered—by which a distinction has for a long while been made between the so-called international rivers and national rivers."[435]

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[432] See, e.g., "The San Juan River belongs to Nicaragua", Press Release, Press Office of the Ministry of Foreign Affairs of Nicaragua, 6 March 2000: Annexes, Vol 5, Annex 157. According to Mr Mauricio Herdocia Sacasa, Agent of Nicaragua: "The San Juan River is a national river; it is a river where the exclusive sovereignty is recognised, therefore, that holds a lot of weight before the International Court of Justice, specially taking into account that the issue of sovereignty is a fundamental factor upon which international law rests. 'Nicaragua has a solid position. It is a strong position under international law and the instruments. If one reviews the Jerez-Cañas Treaty and the Cleveland Award, under no ground you will find that (the alleged right of the *tiquillos*) applies either to armed navigation or transportation, and even less to the navigation of tourists,' he recalled.": "Ticos claim 'new and additional' rights", *El Nuevo Diario*, Managua, 4 November 2005: Annexes, Vol 5, Annex 191.

[433] See, e.g., "The San Juan River belongs to Nicaragua", Press Release, Press Office of the Ministry of Foreign Affais of Nicaragua, 6 March 2000: Annexes, Vol 5, Annex 157.

[434] It should also be noted that art 2(a) of the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses, 21 May 1997, GA Res 51/229 (not yet in force) defines a "Watercourse" as "a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus"; art 2(b) defines an "International watercourse" as "a watercourse, parts of which are situated in different States". In accordance with this systems approach, the San Juan, with its ground waters, tributaries and delta situated in two different States, is an "international watercourse".

[435] *Territorial Jurisdiction of the International Commission of the River Oder*, Judgment No. 16, P.C.I.J. Series A No 23 (10 September 1929), p. 25.

A9. Both criteria are met here. Furthermore, as set out above, the rights and obligations of both riparian States with regard to the San Juan are specifically regulated by international instruments.

A10. The fact that both banks of the San Juan do not belong to the same State is an essential element compelling rejection of Nicaragua's characterisation of the San Juan as a "national river". The Permanent Court, in analysing the legal status of the Kiel Canal before the conclusion of the Treaty of Versailles, stated that "the Kiel Canal, having been constructed by Germany in German territory, was, until 1919, an internal waterway *of the state holding both banks*".[436] The judgment also stressed that:

> "[t]he Court considers that the terms of article 380 [of the Treaty of Versailles] are categorical and give rise to no doubt. It follows that the canal has ceased to be an internal and national navigable waterway, the use of which by the vessels of states other than the riparian state is left entirely to the discretion of that state, and that it has become an international waterway intended to provide under treaty guarantee easier access to the Baltic for the benefit of all nations of the world."[437]

A11. Hence, the fact that the waters of the San Juan belong in their entirety to Nicaragua is not sufficient to deny the characterisation of the river as international. Indeed, a similar situation is found in the case of international rivers crossing different States (so-called "successive rivers"): in each part of the territory of the different States, the waters of these rivers (and even both banks) are, in their entirety, under the exclusive sovereignty of a single State — but this is without prejudice to the existence of international obligations as to such rivers, both under treaties and general international law.

A12. Costa Rica is clearly a riparian State of the San Juan. According to the definition espoused by the Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law Association in 1966 and considered to largely reflect general international law:

> "the term 'riparian State' refers to a State through or along which the navigable portion of a river flows or a lake lies."[438]

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[436] *The S.S. 'Wimbledon'*, P.C.I.J. Series A, No. 1, p. 23 (1923) (emphasis added).

[437] Ibid., p. 22.

[438] Art XII, para. 3. See International Law Association, *Report of the Fifty-Second Conference* (Helsinki, 1966), 505.

A13. Conventional practice from different continents clearly demonstrates that when two States wish to attribute a river entirely to one of them, in order to give that State complete freedom over the river, they chose to allocate not only the waters but also both banks of the river to a single State. These cases include:

- The Treaty of Osnabruck of 24 October 1648 between Sweden and the Emperor of Germany, as regards the River Oder;[439]
- The Treaty of Utrecht of 11 April 1713 between France and Portugal with regard to the boundary along the Amazon River;[440]
- The Treaty between Poland and Prussia of 18 September 1773 over the River Netze;[441]
- The Treaty between the Ottoman Empire and Russia of 14 September 1829 regarding the boundary of the Danube;[442]
- The Treaty between France and Great Britain of 10 August 1889 regarding the boundary between Gambia and Senegal.[443]

A14. Nicaragua has recognized the status of Costa Rica as a riparian on the San Juan. In a note dated 18 October 1886, the Minister of Foreign Affairs of Nicaragua explains with regard to Costa Rica that "article 2 [of the 1858 Treaty of Limits] made her *riparian* in part of the right hand bank of said River; while article 4 established her duties for incurring in that concession.".[444] He went on to say:

> "It is already evident, from the above, that assuming the Treaty of Limits is valid, Costa Rica would merely be a *riparian* of the San Juan River, from its mouth in the Atlantic to three English miles before reaching *Castillo Viejo*."[445]

A15. But even if a river exclusively flows within the territory of one State (i.e. the two banks belong to the same State), this does not necessarily preclude its having an international character. Discussing the Latin American conception of the fluvial regime in international law, a leading author has written:

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[439] 1 CTS 198, 244, Art X. Twiss explains that "Sweden having obtained under the Treaty of Osnabruck (24 Oct. 1648) the cession of the entire river Oder from the Emperor of Germany, was held to have acquired thereby possession of a margin of two German miles on the further bank, as an inseparable accessory to the stream." T Twiss, *The Law of Nations Considered as Independent Political Communities. On the Rights and Duties of Nations in Time of Peace* (Oxford: Clarendon Press, 1892), 238-9.

[440] Art X: "…les deux bords de la rivière des Amazones, tant le méridional que le septentrional, appartiennent en toute propriété, domaine et souveraineté à Sa Majeste Portugaise": 45 CTS 259.

[441] 45 CTS 253, 259, Art II. Twiss, 238 pointed out that "by the Treaty of Warsaw (18 September 1773), Poland agreed that the entire river Netze should belong to Prussia, and Prussia contended, and was ultimately successful in her contention, that the cession of the entire river implied the cession of the stream and both its banks."

[442] 60 CTS 83.

[443] 172 CTS 185.

[444] Note of Secretary of State in charge of the Foreign Affirs of the Republic of Nicaragua, F Castellón, to Secretary of Foreign Affairs of Costa Rica, Ascensión Esquivel, 18 October 1886 (emphasis added), in: República de Costa Rica, *Memoria de la Secretaria de Relaciones Exteriores y Carteras Anexas 1887* (San José: Imprenta Nacional, 1887): Annexes, Vol 3, Annex 35.

[445] Ibid (emphasis added).

> "Dans la conception américaine, un fleuve ne doit pas être considéré comme international au point de vue du régime qui doit lui être appliqué par cela seul qu'il est commun à deux ou plusieurs États ; un fleuve dans cette conception ne doit être considéré comme international que lorsque réellement il présente un intérêt universel au point de vue du commerce et de la navigation ; ce fleuve pourra dès lors être un fleuve qui traverse ou sépare plusieurs États ou un fleuve intérieur."[446]

A16. What is essential for the characterization of a river as international is its regulation by international law, notably by treaty. For instance, the Treaty of Versailles internationalized the River Oder from its confluence with the Oppa, although the Oder ran (at that time) entirely on German territory.[447] For some authors, the fact that an international river becomes "national" due to changes in the territorial sovereignty (i.e. when both banks that happened to belong to two different States later become under the sovereignty of a single State), does not deprive it of its international regime.[448] Indeed, this was the situation of the River Po. The Peace Treaties of Zurich of 10 November 1859[449] and Vienna of 3 October 1866[450] made it an internal Italian river. Nevertheless, freedom of navigation was maintained.[451]

A17. On this basis it is not surprising that the Central American Court of Justice, analyzing the rights and obligations of Costa Rica with regard to the San Juan, came to the following conclusion:

> "The proposition that the rights of navigation on the San Juan River that were confirmed in Costa Rica do not extend to vessels of war, but simply to vessels devoted to revenue and defensive purposes—an interpretation that in no way detracts from the doctrine set forth concerning the practical ownership pertaining in great part to Costa Rica over the San Juan River because navigation with vessels of war, aside from

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[446] C Sosa-Rodriguez, *Le droit fluvial international et les fleuves de l'Amérique latine* (Paris: Pedone, 1935), 110.

[447] Art 331 of Treaty of Peace signed at Versailles on 28 June 1919.

[448] Carathéodory, "Das Stromgebietsrecht und die internationale Flussschiffahrt," vol. 2, in F von Holtzendorff, ed., *Handbuch des Völkernatlitz* (Hamburg, JF Richter, 1887), 303; V d'Erlach, *Conference on Navigable Waterways*, 81; RR Baxter, *The Law of International Waterways, with particular regard to interoceanic canals* (Cambridge MA, Harvard University Press, 1964), 112 (quoted by B Vitányi, *The International Regime of River Navigation* (Alphen van den Rijn, Sijthoff and Noordhoff, 1979)).

[449] Treaty of Peace Between Austria and France and Sardinia, 121 CTS 155, 161, art XVIII.

[450] 132 CTS 209, 211, arts III, IV.

[451] See the intervention of Mr Bignami, on behalf of Italy, at the Conference of Barcelona: Société des Nations, Conférence de Barcelone, *Comptes rendus et textes relatifs à la Convention sur le régime des voies navigables d'intérêt international et à la declaration portent reconnaissance u droit au pavillon des Etats dépourvus de littoral maritime* (Geneva, 1921), 75; P Fauchille, *Traité de droit international public*, Vol I (1925), 560; B Vitány, *The International Regime of River Navigation* (Alphen aan den Rijn: Sijthoff, 1979), 211.

constituting a cause for disquiet, would imply a function appropriate to territorial sovereignty."[452]

A18. To sum up, the San Juan possesses an international status, since its banks belong to two different States, it provides access to the sea to both of them and its regime is regulated by international law, particularly treaty law.

II. General international law concerning navigational rights on international waterways and its relation to the dispute

A19. Chapter 4 of this Memorial focuses on the navigational and related rights of Costa Rica on the San Juan. With the exception of the customary right of fishing for subsistence purposes of the inhabitants living along the river, it dealt with those rights from the conventional viewpoint. However, this is not the only source of Costa Rican rights. As the first part of this Appendix demonstrated, the San Juan has an international character, and Costa Rica is a riparian State. Given this situation, general international law rules relative to navigation on international waterways are also applicable.

A20. There is no doubt that there exist general international law rules related to waterways in general and rivers in particular. The Permanent Court of International Justice, analysing the geographic extent of the rights of navigation established by article 331 of the Treaty of Versailles, explained:

> "The Court must therefore go back to the principles governing international fluvial law in general and consider what position was adopted by the Treaty of Versailles in regard to these principles.
>
> It may well be admitted, as the Polish Government contend, that the desire to provide upstream States with the possibility of free access to the sea played a considerable part in the formation of the principle of freedom of navigation on so-called international rivers.

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[452] Annexes, Vol 2, Annex 21, 220. According to an author writing at the time of the rendering of the Central American Court's judgment, the "rights of Costa Rica in Nicaraguan territory are not dependent merely upon the good faith of Nicaragua in observing her treaty obligations; they rest upon an even stronger basis than that, for they are positive rights belonging to Costa Rica whereby a portion of the territory of Nicaragua is made subservient to certain uses and interests of Costa Rica. In other words, an international servitude has been created by reason of these rights making part of the territory of Nicaragua as the servient state serve certain uses and interests of Costa Rica as the dominant state": CP Anderson, *The Disturbing Influence in Central America of the Nicaraguan Canal Treaty with the United States of America and Its Conflict with the Treaty Rights of Costa Rica* (Gibson Bros, Washington, D.C., 1917), 7-8.

But when consideration is given to the manner in which States have regarded the concrete situations arising out of the fact that a single waterway traverses or separates the territory of more than one State, and the possibility of fulfilling the requirements of justice and the considerations of utility which this fact places in relief, it is at once seen that a solution of the problem has been sought not in the idea of a right of passage in favour of upstream States, but in that of a community of interest of riparian States. This community of interest in a navigable river becomes the basis of a common legal right, the essential features of which are the perfect equality of all riparian States in the use of the whole course of the river and the exclusion of any preferential privilege of any riparian State in relation to the others."[453]

A21. Of course, what the Court said must be adapted to the particular situation of each waterway, in this case, the San Juan. Irrespective of the existence or not of a generalised right to navigation in international rivers in favour of vessels of all nations, it has been asserted that such a customary right does exist in favour of riparian States. The Helsinki Rules of the Uses of the Waters of International Rivers can be considered as declaring an existing general international law rule when it states in its Article XIII that:

"Subject to any limitations or qualifications referred to in these Chapters, each riparian State is entitled to enjoy rights of free navigation on the entire course of a river or lake."[454]

A22. It must be noted that the Cleveland Award qualifies Costa Rican rights declared in the 1858 Cañas-Jerez Treaty, including those of navigation, as "natural rights", and acknowledged that "perhaps" these are not the only rights Costa Rica possesses.[455]

A23. While recognizing to Costa Rica navigational and related rights, the 1858 Treaty could not have had the intention to restrict the existing rights in accordance with general international law. On the contrary, it extended them.

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[453] *Territorial Jurisdiction of the International Commission of the River Oder*, P.C.I.J. Series A No 23, pp. 26-27 (1929).

[454] International Law Association, *Report of the Fifty-Second Conference* (Helsinki, 1966), 506.

[455] As the Cleveland Award held: "*The natural rights of the Republic of Costa Rica* alluded to in the said stipulation [art VIII of the Treaty of Limits] are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified." Cleveland Award, paragraph 10 (emphasis added): Annexes, Vol 2, Annex 16.

This is the case, for example, with regard to the rights granted to all kind of Costa Rican vessels (with the exception of war vessels), freedom from dues, and the right to navigate between two points on the Nicaraguan bank. On the other hand, while recognizing particular conventional rights not existing at the customary level, Nicaragua restricted itself its rights as a riparian State having sovereignty over the waters. This is the case with regard to the exercise of some rights of police that cannot be applied to Costa Rican vessels.

A24. Accordingly navigation by private vessels flying the Costa Rican flag, transporting goods and passengers from one point of Costa Rican territory to another, from Costa Rica to Nicaragua or vice-versa, and from Costa Rica to the sea or vice-versa, can be considered as rights also rooted in general international law. Other navigational and related rights of Costa Rica have a conventional character agreed by both riparian States and recognised in successive international awards and decisions.

III. Conclusions

A25. By way of summary the following conclusions may be reached:

(a) The San Juan is an international river, whose left bank and waters are under the sovereignty of Nicaragua and whose right bank from the end of Punta de Castilla to a point three English miles distant from Castillo Viejo is under the sovereignty of Costa Rica.

(b) The rights and obligations of both riparian States with regard to the river are defined by binding international instruments, in particular the Treaty of Limits, the Cleveland Award, the 1916 Judgment of the Central American Court of Justice and the 1956 Agreement.

(c) Treaty law applicable between the Parties extended Costa Rican navigational and related rights existing under general international law, and to that extent limited Nicaragua's jurisdiction over the River.

Appendix B

The Revenue Guard: Creation and Development

B1. The Costa Rican Revenue Guards were created in the 19th century as part of the Government's effort to control contraband, both of goods whose production was a State monopoly, such as liquor, and foreign articles that were taxed by law.

B2. For example, through Decree No. XVII of 10 May 1847, the Military Guards of the Sarapiquí and La Flor Rivers were created. Article 2 of this Decree assigned to each one a Commander subject to the orders of the General Intendant, and a number of troops which was contingent on the circumstances. Article 3 gave them their tasks, in particular to "apprehend the articles and effects that are illegally introduced in the State, and to impede the exit of any person that does not bear its passport…"[456]

B3. In the 1858 Regulations of the Treasury (Decree No. IV of 23 March 1858) a Chapter was included that referred to the Revenue Guards. Article 161 of Chapter XIX decreed that "besides the fixed revenue guards that are established by these Regulations or that are established by the Customs Ordinances, there will be an ambulatory guard, whose most immediate chief will be the Inspector of the Subordinate Treasury…"[457] Article 162 stated that:

> "there will always be an ambulatory round, watching over to prevent the commission of any fraud or contraband from the Rio Grande to the vicinity of Turrialba; another round will carry out the same vigilance in the territory comprehended between said Rio Grande and the one of Chomes; and another from the latter to the confines of Nicaragua. The Inspector of Treasury will ensure that each of these rounds carries out the service alternatively in each of the said territories four months a year."[458]

B4. Article 163 established as the functions and obligation of the ambulatory rounds the following:

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[456] *Leyes decretos y órdenes expedidos por los Supremos Poderes Legislativo y Ejecutivo de Costa Rica en los años de 1847 y 1848*, Tomo X (San José: Imprenta la Paz, 1863), 90-91: Annexes, Vol 6, Annex 197.

[457] *Colección de las leyes, decretos y órdenes expedidos por los Supremos Poderes Legislativo y Ejecutivo de Costa Rica en el año de 1858*, Tomo XV (San José: Imprenta la Paz, 1871), 58-59: Annexes, Vol 6, Annex 201.

[458] Ibid, 59.

"1st to obey and carry out the orders that they receive from the Revenue Judge, of the Inspector of Treasury, of the Administrators of Public Funds, and from the Governors of the Provinces in regards to the pursuit of frauds and contrabands, and the capture of smugglers or defrauders:

2nd to continuously make the round in the territory in which they are to carry out their service, always watching that transgressions against the Fiscal interests are not committed, and therefore pursuing and seizing the clandestine factories and sales of gunpowder and liquors: the clandestine plantations and sales of tobacco, and the introductions and extractions of articles that are attempted to be carried out by contraband:

3rd to frequently visit the spirit shops, to weight the liquors, to check the measures and to report to the respective Administrator and to the Treasury Inspector the faults they observe; and

4th to equally visit the sales of foreign liquors and the beer distilleries to verify that they are being made with the proper authorization."[459]

B5. On 6 February 1878, through Decree No. X, a Guard was created at the mouth of the San Carlos River. The Decree referred to the growing productive importance of the lands bordering the San Carlos River. It created the Guard to prevent produce from being exported without paying the corresponding taxes (article 2), and to charge those taxes and report this to the Treasury Department. It was also charged with the duty to prevent any import of goods lacking the authorization of the Treasury Ministry (article 3). The San Carlos River Guard had responsibility to pursue "the articles of Fiscal monopoly and to proceed with the utmost diligence in the pursuit of fraud that might be committed against the National Treasury…"[460]

B6. On 16 March 1886, through Decree No. XXXI, the Costa Rican Government created a Revenue Guard at the mouth of the Colorado River, "with the purpose of establishing the necessary surveillance of contraband in the Atlantic coast of the Republic."[461] This Revenue Guard depended on the General Treasury Inspection (article 1). On that same day, and reflecting the importance given to this new maritime and terrestrial Guard, the functions of the Colorado Guard were determined through Decree No. XXXII, which also established that a national steamer would be assigned to it. The functions of this Guard were to be the following:

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[459] Ibid, 59-60.

[460] *Colección de las disposiciones legislativas y administrativas expedidas en el año 1878* (San José: Imprenta Nacional), 30-32, article 5: Annexes, Vol 6, Annex 204.

[461] *Colección de las disposiciones legislativas y administrativas emitidas en el año 1886* (San José: Imprenta Nacional, 1887), 152-153: Annexes, Vol 6, Annex 205.

> "1st To prevent contraband in the waters and territories of its circumscription.
>
> 2nd To give the relevant notice and information for the persecution of smuggling to the guards in San Carlos and Sarapiquí, or to the Inspector General, according to the circumstances.
>
> 3rd To request assistance from the guards of Sarapiquí and San Carlos, and obtain it whenever the Commander of Colorado deems it necessary.
>
> 4th To make at least one monthly visit to the port of Limon in order to take correspondence to and from Colorado.
>
> 5th To reconnoitre at least once a week the Rivers San Juan, Colorado, Sarapiquí and San Carlos; the first in the whole extent that it is navigable for Costa Rica, the second in its entire extent, and the latter two along the entire stretches that are navigable by steamer.
>
> The itinerary shall be reserved in order that the guard's actions are not eluded.
>
> 6th To institute preliminary proceedings and to report seizures to the respective authority at Limon.
>
> 7th To carry out orders received from higher revenue authorities that have been duly communicated."[462]

B7. Other guards were created in different parts of the country. By the time of the National Budget Law of 16 August 1888, the following Guards were contemplated and their respective resources assigned, including the salaries of their personnel:

- Ambulatory Guard to the interior;
- Puntarenas Guard;
- Guanacaste Guard;
- Limón Guard;
- Infiernito Guard;
- Carrillo Guard;
- San Carlos Guard;
- Sarapiquí Guard;
- Barranca Guard;
- Colorado Guard; and
- Frío River and Saboyal Guard.[463]

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[462] Ibid, 153-154: Annexes, Vol 6, Annex 206.

[463] *Colección de las disposiciones legislativas y administrativas emitidas en 1888* (San José: Imprenta Nacional, 1889), 464-467.

B8. In that same National Budget Law the salaries of the Captains and personnel of the national steamers *Mora* and *Juan Santamaría* were also included.[464] In 1891 another steamer was purchased from England to service the Atlantic coast, and through Decree No. CCCXXXIV of 13 July 1891, it was named *Braulio Carrillo*.[465]

B9. In a Report of the Commandant of the Colorado Guard to the General Inspector of the Treasury of 10 March 1895, it was stated that:

> "For the better service and fulfilment of the duties of the Guard of this zone, it was divided into four Bodies, as follows:
>
> I. Guard of San Carlos: Integrated by four guards and a Chief, who traverse from the Mouth of the River with the same name up to the dock of San Rafael, penetrating the channels of Rosalía, Patastes, Tres Amigos, Sábalos, Estero Grande and Arenal.
>
> II. Guard of Sarapiquí: Integrated by four guards and a Chief; traverses from the mouth of the River with the same name up to Hacienda Vieja, visiting the channels of Toro Amarillo, San José, Masallá and Sucio, and la Tigra.
>
> III. Guard of Tortugero: Integrated by two guards who watch over the beach and traverse the Bay and Channel of Tortugero, Palacio Jalora, Parismina and Reventazón.
>
> IV. Guard of Barra del Colorado: Main centre of the Guard's operations, is integrated by a Commandant, a Second Chief and five guards; traverses from the Barra del Colorado up to the mouth of the same, penetrating in Caño de Palma, Symon Lagoon, Agua Dulce, Pereira, Chirripó and Lagunas."[466]

B10. The main tasks carried out by the Colorado Guard, as was explained in the 1895 Report, included seizures, charging import taxes, preparing reports for judicial purposes, granting agricultural permits to the inhabitants of the maritime mille and carrying out commissions.[467] The 1895 Report mentioned that three boats transporting goods imported from San Juan del Norte, Nicaragua, had attempted to elude the vigilance of the Guard to avoid paying import taxes but were apprehended, and that three boats transporting rubber illegally extracted from Costa Rican forests were seized.[468]

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[464] Ibid, 467.

[465] (San José: Imprenta Nacional, 1891), 50-51.

[466] Report of Rafael Cruz, Commandant of the Post Rio Colorado, to the General Inspector of Treasury, Note No. 89, 10 March 1895: Annexes, Vol 6, Annex 212.

[467] Ibid.

[468] Ibid.

B11. In 1897 the Government of Costa Rica acquired a new steamer, which was named *Chirripó* and possessed a rapid fire cannon. The *Chirripó* was charged to render service from Talamanca to San Juan del Norte, carrying mail and passengers.[469] Other steamers mentioned in the 1897 Report of the Secretary of War and Navy included the following:

- The Turrialba, which carried two Nordfelt machine guns and a one-pound cannon.
- The Poas, which was the largest and had two Drig System rapid fire cannons, one of one pound and the other of six pounds.
- The Nicoya, which was stationed to serve to the Barra del Colorado route.
- Other small steamers, the Doctor Castro, the Puntarenas and the General Fernandez were stationed in Puntarenas and the Gulf of Nicoya.[470]

B12. With the purpose of unifying and reorganizing the diverse regulations governing the Revenue Guards and re-establishing the Fiscal Tribunal, a law for the Organization of the Revenue Guards was promulgated in 1923.[471]

B13. According to article 1 of this Law, the Revenue Guards form a specialized corps for the vigilance and protection of the interests of the Public Revenue.[472] Article 2 states that the Revenue Guards are part of the public force and are therefore subject to military discipline.[473]

B14. Article 6 specifies that the Revenue Guards will take on different names, according to their particular functions, such as Customs, Ports, Telegraphs, Border, Forests, etc. According to articles 7 and 8, the Guards are considered as either fixed or ambulatory: those of Customs and of Ports are fixed and all the others ambulatory.[474]

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[469] Report of the Navy Inspector E.G. Chamberlain to the Secretary of War and the Navy of Costa Rica, 1897. Memoria de Guerra y Marina correspondiente al año económico de 1897-98 (San José: Tipografía Nacional, 1898), 195: Annexes, Vol 6, Annex 213.

[470] Ibid.

[471] Colección de Leyes y Decretos, Segundo Semestre, Año de 1923 (San José: Imprenta Nacional, 1923), 306-325: Annexes, Vol 6, Annex 217.

[472] Ibid, 306.

[473] Ibid.

[474] Ibid, 307.

B15. Article 9 specifies the purposes of the Guards:

> "a) The investigation and prosecution of any infraction of the Treasury laws and, in particular, the Customs and the monopolies.
> b) The pursuit and capture of those suspected of faults or crimes against the Public Treasury.
> c) The seizure of any object that exists in contravention of a Treasury law.
> d) Policing and surveillance of roads and paths.
> e) Maintenance of Public Order.
> f) Providing assistance to the authorities and other public functionaries in the exercising of their functions.
> g) Repressing illegal games"[475]

B16. Article 18 provides that "the vessels of the Guards will attend to the transportation of merchandize and passengers in those places where there are no such private initiatives" and that the Department of Treasury will establish the corresponding tariffs.[476] Article 19 made the same provision for mail and telegraph services.[477]

B17. It can be appreciated that the roles and functions of the Revenue Guards went beyond fiscal control duties. Indeed, they also carried out general policing and surveillance, including border protection, as well as transportation of merchandize, mail and people.

B18. With the abolition of the armed forces in 1949, Costa Rica's protection of its territorial integrity was assigned to the police. Article 12 of Costa Rica's Political Constitution provides:

> "Article 12 The Army as permanent institution is abolished. There shall be the necessary police forces for the surveillance and the preservation of the public order."[478]

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[475] Ibid.

[476] Ibid, 309.

[477] Ibid, 310.

[478] Constitution of the Republic of Costa Rica, 8 November 1949, Bilingual Edition, San José: Comisión Nacional para el Mejoramiento de la Administración de la Justicia, 2001, 18: Annexes, Vol 6, Annex 218.

B19. Following the promulgation of the Law for the Creation of the Rural Assistance Guard (Law No. 4639 of 23 September 1970), the customs and other police controls that were carried out by the Revenue Guards, as well as its personnel, were transferred to the newly created Rural Assistance Guard. This Law established the following:

"Article 2 The Rural Assistance Guard Corps will have jurisdiction in the entire Republic. To the Rural Assistance Guard will be incorporated the Revenue Guard and the Village and Town Police."[479]

B20. Law No. 4639 of 1970 also established the tasks and responsibilities of the Rural Assistance Guard, many of which corresponded to those formerly performed by the Revenue Guard. For example, the Law established by article 3 the following:

"Article 3:
The Rural Assistance Guard will have as functions:

…

c) Ensure the observance of the laws against contraband, narcotics and the ones protecting the public treasury;

d) Cooperate in the guard and surveillance of the borders, coasts, customs and ports;

…

l) Provide due collaboration to the Ministry of Treasury, when it is required, regarding the vigilance of the public revenue;

…

For the proper performance of its functions, the Rural Assistance Guard shall have the same powers and attributions in regards to arrest, detention, seizure and search that currently possess the Village and Town Police and the Revenue Guard"[480]

B21. Law No. 4639 of 1970 was amended by Law No. 4766 of 28 May 1871, which added two new sub-paragraphs to article 3:

"n) To perform the same juridical acts that formerly appertained to the Village and Town Police and the Revenue Guard; and

ñ) To exercise all the other responsibilities that in accordance with the juridical order where assigned to the authorities mentioned in the

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[479] Colección de leyes, decretos, acuerdos y resoluciones, Segundo Semestre 1970, I Tomo (San José: Imprenta Nacional, 1970), 564: Annexes, Vol 6, Annex 220.

[480] Ibid. 565.

> previous paragraph, except for those that refer to the municipal regime."[481]

B22. With the promulgation of the General Law of Police (Law No. 7410 of 26 May 1994) the Rural Assistance Guard Law No. 4639 was abrogated, but the Rural Guard Corps was retained as one of the police bodies regulated by the new Law No. 7410. Article 6 of Law No. 7410 establishes Costa Rica's different police bodies:

> "The following will be the police bodies, in charge of the public security: the Civil Guard, the Rural Assistance Guard, the Police in charge of the control of non-authorized drugs and connected activities; the Border Police, the Immigration Police, the Fiscal Control Police, the State Security Direction, the Transit Police, the Penitentiary Police and the other police corps whose competence is foreseen in the Law."[482]

B23. As can be seen, Law No. 7410 created the Fiscal Control Police as a specialized corps in charge of fiscal and revenue control, thereby removing those functions from the Rural Assistance Guard. Articles 27 and 28 of Law No. 7410 established the new Fiscal Control Police. Article 28 provided that:

> "The Fiscal Control Police will have the following obligations and attributions:
>
> a) Ensure compliance with the fiscal laws.
> b) Assist the Ministry of Treasury in all tasks required to control tax evasion.
> c) Carry out all type of searches in order to persecute crimes of fiscal nature. A judicial authorization will be required to perform searches and the other legal requirements must be complied with.
> d) Inspect commercial establishments at any moment.
> c) To ensure the respect of the Political Constitution, the international treaties, the laws and related regulations."[483]

B24. Law No. 7410 also created the Border Police, with the following responsibilities:

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[481] Colección de Leyes, Decretos, Acuerdos y Resoluciones. Primer Semestre, I Tomo (San José: Imprenta Nacional 1971), 1170: Annexes, Vol 6, Annex 221.

[482] Colección de leyes, decretos y reglamentos, I Semestre 1994, I Tomo (San José: Imprenta Nacional, 1995), L-260: Annexes, Vol 6, Annex 226.

[483] Ibid, L-265-66.

"Article 24. Responsibilities

The following will be the responsibilities of the Border Police:

a) To watch and safeguard the terrestrial, maritime and aerial borders, including the public buildings where immigration and customs activities are performed.

b) To ensure respect for the Political Constitution, the international treaties and the laws that guaranty the integrity of the national territory, the territorial waters, the continental shelf, the patrimonial sea or the exclusive economic zone, the aerial space and the exercise of the rights that correspond to the State."[484]

B25. As can be seen, since 1994 the revenue or fiscal control tasks were taken over by the new Fiscal Control Police, which does not possess boats or vessels to perform its duties in waterways such as the San Juan. Nevertheless, Law No. 7410 establishes the principles of cooperation, collaboration and supplementation between the different police bodies. Article 8 of Law No. 7410 states the following:

"Article 8. Responsibilities

The following are general responsibilities of all police corps:

...

e) To act according to the principle of cooperation and mutual aid, with a view to proper coordination, in accordance with the instances and the organs foreseen to that effect.

f) To act, in a supplementary way, in the performance of the necessary emergency acts, when confronted by situations that should be attended by a specialized police corp."[485]

B26. According to this provision, the absence of the Fiscal Police in any part of the country can be made up for by other police corps. In the case of the San Juan border area, in the absence of the Fiscal Police, its revenue control and related duties can be performed by the Rural Guard and the Border Police. Indeed it was these police corps who continued maintaining presence on the San Juan border zone, carrying out general policing, protecting the territory and assisting the Costa Rican population in that region.

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[484] Ibid, L-265.

[485] Ibid, L-261.

B27. Furthermore, in the year 2000 the National Coastguard Service was created as a new police body specifically charged with the performance of police functions in all of the country's navigable waterways. Article 2 of the Law of Creation of the National Coastguard Service (Law No. 8000 of 5 May 2000) specifically charges the Coastguard Service to collaborate with the administrative and judicial authorities in the protection of the law. This article reads:

> "The responsibilities of the [National Coastguard] Service are:
>
> ...
>
> g) To collaborate with the administrative and judicial authorities in charge of protecting the natural resources, fighting against the illicit traffic of drugs and related activities, as well as against the illegal immigration, the arms traffic and other illicit activities."[486]

B28. Thus it can be appreciated that currently the National Coastguard Service is entitled to assist the Fiscal Police, the Rural Guard and the Border Police in their responsibilities in the San Juan River border area and in the rest of the Costa Rican towns and villages that require the San Juan as a means of access.

B29. More recently, in the Regulations for the Organization of the Ministry of Public Security of 1 December 2004, the work of the Civil Guard, the Rural Assistance Guard, the Police in charge of the control of non-authorized drugs and connected activities, and the Border Police was unified under the direction of the Ministry of Public Security. Articles 52 and 54 of these Regulations present an integrated approach to the work of these bodies:

> "ARTICLE 52: the Civil Guard, the Rural Assistance Guard, the Police in charge of the control of non-authorized drugs and connected activities, and the Border Police will depend on the Ministry of Public Security, in accordance with what is stipulated in article 6 of the General Law of Police number 7410 and its reforms, as well as with what is stipulated in Law N° 8000 that creates the National Coastguard Service, and in the Executive Decree N° 23427 MP. The Public Reserve Force will also be ascribed when it is summoned on a temporary basis.
>
> ...
>
> ARTICLE 54: The Rural Assistance Guard, the Civil Guard, and the Border Police, as components of the Public Force of this Ministry, will act under one single police command, in each region within the national territory that is determined by the

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[486] Diario Oficial *La Gaceta* No. 99, Alcance No. 34 (San José: Imprenta Nacional, 24 May 2000), 1: Annexes, Vol 6, Annex 230.

Ministry in accordance with the competences and responsibilities that are granted to them in the General Law of Police and its reforms."[487]

Conclusions

B30. This Appendix has demonstrated the following:

(a) Although the Revenue Guards were originally created with the task of controlling contraband and illegal production of goods, their tasks and duties were more ample, and in the areas of their jurisdiction, particularly in the rural and border areas, included general policing and even border protection.

(b) It was the Revenue Guard who carried out fiscal control, border protection and other police tasks in the San Juan River bordering region, and who effectively navigated in armed vessels and carrying their service arms.

(c) The Revenue Guards existed as such since their creation during the 19th Century until 1971, when they were absorbed by the newly created Rural Assistance Guard.

(d) The Rural Assistance Guard was the main police body present in the rural and bordering areas, and, together with the Border Police, continued carrying out ample policing duties, including those that formerly appertained to the Revenue Guards.

(e) The Rural Assistance Guard and the Border Police, supplemented by the support of the National Coastguard Service, are the police corps legally entitled in modern times to carry out the tasks, functions and responsibilities that appertain to the Revenue Guard.

(f) Under the auspices of the Public Force, the work of these police corps is more closely coordinated, acting under one single police command in the regions where they are present.

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[487] Diario Oficial La Gaceta No. 6, Alcance No. 1 (San José: Imprenta Nacional, 10 January 2005), 9: Annexes, Vol 6, Annex 234.

CERTIFICATION

I have the honour to certify that the documents annexed to this Memorial are true copies and conform to the original documents and that the translations into English made by Costa Rica are accurate translations.

Ambassador Edgar Ugalde Alvarez
Agent of Costa Rica
29 August 2006

DISPUTE CONCERNING NAVIGATIONAL AND RELATED RIGHTS

(COSTA RICA *v.* NICARAGUA)

MEMORIAL OF COSTA RICA

VOLUME 2

(Annexes 1 to 29)

29 August 2006

Annex 1

ROYAL ORDINANCE WITH DIEGO GUTIERREZ FOR THE CONQUEST OF THE PROVINCE OF CARTAGO, MADRID, 29 NOVEMBER 1540 (EXTRACT)

SOURCE : D. MANUEL M. DE PERALTA, *COSTA RICA, NICARAGUA Y PANAMÁ EN EL SIGLO XVI : SU HISTORIA Y SUS LÍMITES* (MADRID : LIBRERÍA DE M. MURILLO, 1883), P. 102

TRANSLATION

Royal Ordinance with Diego Gutierrez for the Conquest of the Province of Cartago, Madrid, 29 November 1540

"Firstly, I grant you license and faculty so that by on our behalf and in our name and that of the Royal Crown of Castille you may conquer and populate the land that remains for us in said Province of Veragua, inclusive from sea to sea… measured in the said manner must commence your conquest and population, and end at the Rio Grande, towards the west of the other part of Cape Camarón, the coast of said river towards Honduras remaining under the governance of the said province of Honduras, also if in said river there be islands populated or to be populated with Indians, which have not been populated and conquered by Spaniards, you can conquer them, and the navigation and fishing and other uses of the said river shall be common, provided and insofar as you do not come within fifteen leagues of the lagoon of Nicaragua, since those fifteen leagues and with the said lagoon must stay and stays to the governance of Nicaragua; but the navigation and fishing that remains with you in said river, and the said fifteen leagues and the lagoon that remain with Nicaragua shall be common…"

COSTA-RICA
NICARAGUA Y PANAMÁ
EN EL SIGLO XVI
SU HISTORIA Y SUS LÍMITES

SEGUN LOS DOCUMENTOS
DEL ARCHIVO DE INDIAS DE SEVILLA, DEL DE SIMANCAS, ETC.
RECOGIDOS Y PUBLICADOS
CON NOTAS Y ACLARACIONES HISTÓRICAS Y GEOGRÁFICAS
POR

D. MANUEL M. DE PERALTA

Correspondiente de las Reales Academias Española y de la Historia,
de la de Buenas Letras de Sevilla y de la Sociedad Geográfica de New-York;
del Comité de honor de la Asociacion literaria internacional,
Enviado extraordinario
y Ministro plenipotenciario de Costa-Rica, etc.

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1883

diciones que de yuso seran contenidas sobre lo que yo mandé tomar con vos el asyento y capitulacion siguientes.

«Primeramente, vos doy licencia y facultad para que por nos y en nuestro nombre et de la Corona real de Castilla, podais conquistar e poblar la tierra que queda para nos en la dicha provincia de Veragua, incluso de mar a mar, que comiençe de donde se acabaren las veinte et cinco leguas en quadra, de que hemos hecho merced al almirante don Luis Colon, hazia el poniente, las quales dichas veynte et çinco leguas comiençan desde el Rio de Velen ynclusive, contando por un paralelo hasta la parte ocidental de la bahia de Çarabaro, y las que faltaren para las dichas veynte et çinco leguas, se han de contar adelante de la dicha bahia por el dicho paralelo, y donde se acabaren las dichas veynte e çinco leguas comiençen otras veynte e çinco leguas por un meridiano Norte Sur, y otras tantas comiençen desde el Rio de Velen, por el dicho meridiano del dicho Norte Sur, y donde las dichas veynte et çinco leguas se acabaren comiençen otras veynte et çinco, las quales se han de yr contando por un paralelo hasta fenecer donde se acabaren las dichas veynte et çinco leguas, que se contaren mas adelante de la bahia de Çarabaro, de manera que donde se acabaren las dichas veynte et çinco leguas en quadra, medidas de la manera que dicha es, ha de començar la dicha vuestra conquista y poblaçion, y acabar en el Rio Grande hacia el Poniente de la otra parte del cabo de Camaron, con que la costa del dicho Rio hazia Honduras quede en la gobernacion de la dicha provincia de Honduras, e asi mismo si en el dicho Rio hoviere algunas yslas pobladas o por poblar de indios, y no estuvieren conquistadas y pobladas de españoles, las podeys vos conquistar, y que la navegacion y pesca e otros aprovechamientos del dicho Rio sean comunes, e asj mismo con tanto que no lleguéis á la laguna de Nicaragua con quince leguas, por quan-

Annex 2

ROYAL PROVISION OF HIS MAJESTY THE EMPEROR AND THE QUEEN, DOÑA JUANA, ABOUT THE LIMITS OF THE GOVERNANCE OF CARTAGO, AND IN PARTICULAR ON THE LIMITS OF THE DESAGUADERO OR SAN JUAN RIVER OF NICARAGUA, TALAVERA, 6 MAY 1541 (EXTRACT)

SOURCE : D. MANUEL M. DE PERALTA, *COSTA RICA, NICARAGUA Y PANAMÁ EN EL SIGLO XVI : SU HISTORIA Y SUS LÍMITES*
(MADRID : LIBRERÍA DE M. MURILLO, 1883), PP. 125-127

TRANSLATION

Royal Provision of His Majesty the Emperor and the Queen, Doña Juana, About the Limits of the Governance of Cartago, and in Particular on the Limits of the Desaguadero or San Juan River of Nicaragua, Talavera, 6 May 1541

"In the villa of Madrid, on 9th day of the month of April of the year 1541, seen by the lords of the Council of the Indies of His Majesty the plea in degree of review presented by Rodrigo de Contreras, Governor of Nicaragua, and Diego Gutierrez, Governor of the Province of Cartago, requested that His Majesty give letter so that said Diego Gutierrez can enter through the mouth of the Desaguadero of the North Sea, and populate and distribute on the coast of both sides of said Desaguadero, even if it has been discovered by said Rodrigo de Contreras or by the Captains sent, as long as that said Diego Gutierrez does not enter where, said Rodrigo de Contreras or said Captains have populated or distributed, and that was really possessed by the encomenderos in all of said Desaguadero, in both said coasts, because that is how it is established by the Ordinance that was taken with said Diego Gutierrez, and if about it there were doubts, the hearers shall declare it, and order that said Governors keep and comply with the aforementioned, under penalty of loosing said Governances, and it is so pronounced and mandated in degree of review, and likewise we mandate that said Diego Gutierrez nor the captains and people that he take now or in any time, may not enter nor do enter in said lagoon nor within the 15 leagues of the Desaguadero, even if it was not discovered or populated by said Rodrigo de Contreras; and now, by said Rodrigo de Contreras, it has been implored that we send our letter and Provision so that what is contained therein, by said our Council, pronounced in degree of review, be kept and complied with or as our grace commands, which seen by our said Council, was agreed that we shall give this our letter for you, and finding it in good form, thereby we declare and mandate that you, said Diego Gutierrez, may enter by the mouth of said Desaguadero of the North Sea and populate and distribute on the coast of both sides of said Desaguadero, even if it has been discovered by said Rodrigo de Contreras or by the Captains sent, as long as you do not enter where, said Rodrigo de Contreras or said Captains have populated or distributed, and that was really possessed by the encomenderos in all of said Desaguadero, in both said coasts, because that is how it is forbidden to you by said Ordinance that we have taken with you, and if about the aforementioned there were some doubts between the both of you, we mandate that you recur to our hearers of our Audience and Royal chancellery, that resides in the city of Panama of the Province of Tierra Firme, to whom we mandate that heard the parties, declare it, and what is declared and mandated we order you said Diego

Gutierrez and said Rodrigo de Contreras, that you both be obliged to comply, and it is also forbidden, defended and mandated to you Diego Gutierrez that you, nor your captains or people that you take now or in any time, may not enter nor do enter in said lagoon, nor within the 15 leagues of the said Desaguadero, that by your Ordinance is forbidden and banned, even if it were not discovered or populated by said Rodrigo de Contreras, all of which is set forth and declared in this our letter that we mandate to you, said Diego Gutierrez and said Rodrigo de Contreras, that you keep and comply with, each of you, with that which corresponds and pertains to comply with, and that you do not go against the literal meaning and form of it, under penalty of loosing said Governances that have been given to you, and more than one hundred thousand maravedis for our chamber./ Dated in Talavera on 6th days of the month of May of the year 1541."

COSTA-RICA
NICARAGUA Y PANAMÁ

EN EL SIGLO XVI

SU HISTORIA Y SUS LÍMITES

SEGUN LOS DOCUMENTOS
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RECOGIDOS Y PUBLICADOS

CON NOTAS Y ACLARACIONES HISTÓRICAS Y GEOGRÁFICAS

POR

D. MANUEL M. DE PERALTA

Correspondiente de las Reales Academias Española y de la Historia,
de la de Buenas Letras de Sevilla y de la Sociedad Geográfica de New-York;
del Comité de honor de la Asociacion literaria internacional,
Enviado extraordinario
y Ministro plenipotenciario de Costa-Rica, etc.

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71, Rue de Rennes

1883

cho auto se quitaban todas las dubdas que podia aver entre vosotros, y que si alguna de nuevo naciese, estaba bien remitida a los dichos nuestros Oydores; e ansy nos suplicó mandásemos confirmar el dicho auto, syn embargo de lo en contrario alegado, todo lo cual visto por los del dicho nuestro Consejo y lo demas que por vuestra parte y por parte del dicho Rodrigo de Contreras fue alegado cerca dello, pronunciaron otro auto del tenor siguiente:/—En la villa de Madrid, a nueve dias del mes de abril de mill e quinientos e quarenta e un años, vistas por los señores del Consejo de las Yndias de Sú Magestad las suplicaciones en grado de revista interpuestas por parte de Rodrigo de Contreras, Governador de Nicaragua, y Diego Gutierrez, Governador de la provincia de Cartago, mandaron que se dé carta de su magestad, para que el dicho Diego Gutierrez pueda entrar por la boca del Desaguadero de la mar del Norte, y poblar y repartir en la costa de ambas partes del dicho Desaguadero, aunque este descubierto por el dicho Rodrigo de Contreras o por los capitanes que obieren embiado, con tanto que el dicho Diego Gutierrez no entre en lo quel dicho Rodrigo de Contreras o los dichos Capitanes ovieren poblado o repartido e poseyeren los encomenderos realmente en todo el dicho Desaguadero, en ambas las dichas costas, porque ansy le fue y esta proveido por la capitulacion que se tomo con el dicho Diego Gutierrez, e que si cerca dello obiere dubdas, los oydores lo declaren, e mandavan que los dichos governadores guarden e cumplan lo susodicho, so pena de privaçion de las dichas governaçiones, e ansy lo pronunciaban e mandaban en grado de revista, è ansy mismo mandamos que el dicho Diego Gutierrez, ny los capitanes y gente que llevare agora ni en tiempo alguno, no puedan entrar ny entren en la dicha laguna ny en las quince leguas del Desaguadero, aunque no esté poblado ni descubierto por el dicho Rodrigo de Contreras; e agora por parte del dicho Rodrigo de Contreras nos ha sido suplicado le mandasemos dar nuestra carta e provision para que lo contenido en el dicho auto, por los del dicho nuestro Consejo, pronunçiado en grado de revista, fuese guardado e cumplido o como la nuestra merced fuese, lo qual visto por los del dicho nuestro consejo, fue acordado que debiamos mandar dar esta nuestra carta para vos, e nos tuvimoslo por bien, por la qual declaramos e mandamos que vos el dicho Diego Gutierrez podais entrar por la boca del dicho Desaguadero de la mar del Norte y poblar y repartir en la costa de ambas partes del dicho Desaguadero, aun queste descubierto por el dicho Rodrigo de Contreras y por los capitanes que obiere enbiado, con tanto que no entreis en lo quel dicho Rodrigo de Contreras o los dichos capitanes obieren poblado o repartido, e poseyeren los comenderos realmente en todo el dicho Desaguadero en ambas las dichas costas, porque ansy vos esta proybido por la dicha Capitulacion que con vos mandamos tomar, e sy cerca de lo susodicho entre vosotros obiese algunas dudas, mandamos que ocurrays á los nuestros oydores de la nuestra abdiencia y chançilleria Real, que reside en la cibdad de Panama de la provincia de Tierra Firme, a los quales mandamos que oydas las partes lo declaren, e lo que ansy declarasen y mandasen mandamos a vos el dicho Diego Gutierrez e a dicho Rodrigo de Contreras, que ambos a dos seays obligados a lo cumplir, e ansy mismo proibimos, defendemos y mandamos a vos el dicho Diego Gutierrez que vos, ni los capitanes y gente que llevaredes agora ni en tiempo alguno, no podays ni puedan entrar ni entren en la dicha laguna, ni en las quince leguas del dicho Desaguadero, que por la dicha vuestra Capitulacion os esta proibido y vedado aunque no este poblado ni descubierto por el dicho Rodrigo de Contreras, todo lo qual como de suso se contiene e declara en esta nuestra carta mandamos a vos el dicho Diego Gutierrez e al dicho Rodrigo de Contreras, que guardeys y cumplays, cada uno lo que le tocare e atañare de cumplir, y que contra el tenor y forma dello non vayais ny paseys por alguna manera, so pena de privacion de las dichas governaçiones que vos estan encomendadas, e mas de cien mill maravedis para la nuestra camara./ Fecha en Talavera a seis dias del mes de mayo de mill e quinientos e quarenta e un años/ FR. GARCIA, *Cardinalis hispalensis*/ *Refrendada de* JUAN DE SAMANO/ *Firmada del dottor* VELTRAN. OBISPO DE LUGO. *Dottor* BERNAL, GUTIERRE VELAZQUEZ.»

Annex 3

TITLE OF ALCALDE MAYOR OF THE PROVINCES OF NUEVA CARTAGO AND COSTA RICA, IN FAVOUR OF LICENTIATE JUAN CAVALLON — LIMITS OF THESE PROVINCES. SANTIAGO DE GUATEMALA, 17 MAY 1561 (EXTRACT)

SOURCE : D. MANUEL M. DE PERALTA, *COSTA RICA, NICARAGUA Y PANAMÁ EN EL SIGLO XVI : SU HISTORIA Y SUS LÍMITES*
(MADRID : LIBRERÍA DE M. MURILLO, 1883), PP. 194-195

TRANSLATION

Title of Alcalde Mayor of the Provinces of Nueva Cartago and Costa Rica, in favour of Licentiate Juan Cavallon.- Limits of these Provinces. Santiago de Guatemala, 17 May 1561.

"…Therefore by Provision given at our Audience and Royal chancellery of the confines, We mandate and appoint to Licentiate Juan de Cavallon, who was our Alcalde Mayor at the Province of Nicaragua, that he go on to discover and populate and pacify the naturals of Costa Rica and Nuevo Cartago, and bring them by doctrine and peace to the knowledge of our Lord and that they recognize us and give to us the dominion that is owed to us as King and natural Lord, and now we are informed that said Licenciate Cavallon, moved by the zealous service to God our Lord and ours, putting into execution the aforesaid, went to said journey, taking with him the people that he could and that entering in said land, he populated the Ciudad del Castillo de Garci-Muñoz and the Port of Landecho, which is in the South Sea, from where he has started to bring to peace many of the Chiefs and naturals of said land, and that from the aforementioned he has taken news that further on *as far as the boundary of the city of Nata and its jurisdiction, in the Kingdom of Tierra Firme, otherwise called Castilla del Oro, and then along this line to the limits of the Dukedom of Veragua, and from the Southern Sea to the Northern Sea up to the Desaguadero, this being included* there are many naturals that have not had news of God our Lord…"

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Titulo de Alcalde Mayor de las Provincias de Nueva Cartago y Costa Rica, en favor del Licenciado Juan Cavallon.—Limites de estas Provincias

SANTIAGO DE GUATEMALA, 17 DE MAYO DE 1561.

DON PHELIPE, por la gracia de Dios, Rey de Castilla, de Leon, de Aragon, de las dos Sicilias, de Jherusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mayorca, de Sevilla, de Cerdeña, de Córdoba, de Córcega, de Murcia, de Jaen, de los Algarbes, de Algeciras, de Gibraltar, de las Islas de Canarias, de las Indias, Islas e Tierra-Firme del mar Océano, Conde de Barcelona, Señor de Vizcaya e de Molina, Duque de Atenas y de Neopatria, Conde de Ruisellon, e de Cerdania, Marqués de Oristan y de Goçiano, Archiduque de Abstria, Duque de Borgoña e de Brabante y Milan, Conde de Flandes, e de Tírol, &. Por quanto por provision librada en la nuestra Audiencia e chancilleria Real de los Confines, Nos encargamos y mandamos a el licenciado Juan de Cavallon, nuestro Alcalde mayor que a la sazon era en la Provincia de Nicaragua, que fuese a descubrir e poblar e pacificar los naturales de Costa-Rica e nuevo Cartago, y traerlos por doctrina y paz al conoscimiento de nuestro Señor e que nos reconosciesen e diesen el dominio que se nos deve como a Rey y Señor natural, e agora somos ynformados que dicho Licenciado Cavallon, movido con zelo del servicio de Dios nuestro Señor y nuestro, poniendo en ejecucion lo susodicho, fué a la dicha jornada, llevando consigo la gente que pudo haber, y que entrando en la dicha tierra pobló la Cibdad del Castillo de Garci-Muñoz y el puerto de Landecho, ques en la mar del Sur, desde donde ha comenzado a traer de paz muchos de los caciques e naturales de la dicha tierra, y que de los susodichos ha tomado noticia que adelante *hasta los limites e jurisdicion de la Cibdad de Natá, del Reino de Tierra-Firme, llamada Castilla del Oro, la tierra en largo hasta los límites del Ducado de Veragua, y desde la mar del Sur hasta la del Norte, hasta el Desaguadero inclusive*, ay mucha cantidad de naturales que no han tenido noticia de Dios nuestro Señor, los quales estan en su gentilidad y que debaxo de dicho zelo e por cumplir lo que por nos le esta mandado, queria yr á los conquistar y traer de paz e poblar e fundar en la dicha tierra e puertos que en ella se pudiesen descubrir, ansi por la mar del Sur como la del Norte, cibdades, villas y lugares, para que la dicha tierra se allane y en ella aya cristianos españoles que la tengan poblada en nuestro nombre, y los dichos naturales pudiesen venir al dicho conocimiento e se yntroduzca en ellos la dotrina evangelica y costumbre de paz y justicia, y acatando lo suso dicho, y a ques necesario nombrar persona que sea nuestro alcalde mayor de la dicha tierra, e tenga la jurisdicion cibil e criminal, e provea y haga las cosas que en ella fuesen necesarias de hazer e proveer, en bien y aumento, pulicía e conbersion de los dichos naturales e de las otras personas que en la dicha tierra ovieren de rresidir e que a vos el dicho licenciado Juan de Cavallon Nos a cometido y que nos servireis de aqui adelante, e a vuestras letras y persona, subficiencia y fidelidad, que

Annex 4

UNITED STATES-GREAT BRITAIN, CONVENTION CONCERNING A SHIP CANAL CONNECTING THE ATLANTIC AND PACIFIC OCEANS (CLAYTON-BULWER), ARTICLES I, IV, VI, WASHINGTON, D.C., 19 APRIL 1850 (IN FORCE 4 JULY 1850)

SOURCE : 104 *CTS* 41-45 ; 38 *BFSP* 4

Convention for Facilitating and Protecting the Construction of a Ship Canal between the Atlantic and Pacific Oceans etc. between Great Britain and the United States, signed at Washington, 19 April 1850

THE text of this, the Clayton-Bulwer Treaty, is taken here from Miller, *Treaties and other International Acts of the United States*, vol. V, p. 671. The Treaty, which was terminated by that of 18 November 1901, is printed also in *Parliamentary Papers, 1850*, vol. LVI, p. 37; *British and Foreign State Papers*, vol. XXXVIII, p. 4; *Hertslet's Commercial Treaties*, vol. VIII, p. 969; by Martens, *Nouveau Recueil Général*, vol. XV, p. 187; Malloy, *Treaties etc. between the United States and Other Powers*, p. 659, and Martens et de Cussy, *Recueil Manuel et Pratique des Traités*, vol. VI, p. 386. There is added to Miller's text here, reproduced from *British and Foreign State Papers*, vol. XLII, p. 162, the text of the Declaration respecting British Honduras made by the British plenipotentiary upon the exchange of ratifications. This is printed also in *Hertslet's Commercial Treaties*, vol. X, p. 645, and by Martens, *Nouveau Recueil Général*, vol. XV, p. 192.

ENGLISH TEXTS

THE UNITED STATES OF AMERICA and HER BRITANNIC MAJESTY, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by Ship Canal, which may be constructed between the Atlantic and Pacific Oceans, by the way of the River San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean,—THE PRESIDENT OF THE UNITED STATES, has conferred full powers on JOHN M. CLAYTON, Secretary of State of the United States; and HER BRITANNIC MAJESTY on the Right Honourable Sir HENRY LYTTON BULWER, a Member of Her Majesty's Most Honourable Privy Council, Knight Commander of the Most Honourable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles.

ARTICLE I.

The Governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said Ship Canal; agreeing, that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or People for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any State or Government through whose territory the said Canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said Canal, which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain, traversing the said Canal, shall, in case of war between the contracting parties, be exempted from blockade, detention or capture, by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said Canal, as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said Canal, the contracting parties engage that, if any such Canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local Government or Governments, through whose territory the same may pass, then the persons employed in making the said Canal and their property used, or to be used, for that object, shall be protected, from the commencement of the said Canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise, with any State, States or Governments possessing, or claiming to possess, any jurisdiction or right over the territory which the said Canal shall traverse, or which shall be near the waters applicable thereto; in order to induce such States, or Governments, to facilitate the construction of the said Canal by every means in their Power: and furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free Ports,—one at each end of the said Canal.

Article V.

The contracting parties further engage that, when the said Canal shall have been completed, they will protect it from interruption, seizure or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said Canal may forever be open and free, and the capital invested therein, secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said Canal, and guaranteeing its neutrality and security when completed, always understand that, this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments, or either Government, should deem that the persons, or company, undertaking or managing the same, adopt or establish such regulations concerning the traffic thereupon, as are contrary to the spirit and intention of this Convention,—either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandize or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee, without first giving six months notice to the other.

Article VI.

The contracting parties in this Convention engage to invite every State with which both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other; to the end, that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the Canal herein contemplated. And the contracting parties likewise agree that, each shall enter into Treaty stipulations with such of the Central American States, as they may deem advisable, for the purpose of more effectually carrying out the great design of this Convention, namely,—that of constructing and maintaining the said Canal as a ship-communication between the two Oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they, also, agree that, the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such Treaty stipulations; and, should any differences arise as to right or property over the territory through which the said Canal shall pass—between the States or Governments of Central America,—and such differences should, in any way, impede or obstruct the execution of the said Canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said Canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

ARTICLE VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said Canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons, or company, as may first offer to commence the same with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this Convention; and if any persons, or company, should already have, with any State through which the proposed Ship-Canal may pass, a contract for the construction of such a Canal as that specified in this Convention,—to the stipulations of which contract neither of the contracting parties in this Convention have any just cause to object,—and the said persons, or company, shall, moreover, have made preparations and expended time, money and trouble on the faith of such contract, it is hereby agreed, that such persons, or company, shall have a priority of claim over every other person, persons or company, to the protection of the Governments of the United States and Great Britain, and be allowed a year, from the date of the exchange of the ratifications of this Convention, for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood, that if, at the expiration of the aforesaid period, such persons, or company, be not able to commence and carry out the proposed enterprize, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons, or company, that shall be prepared to commence and proceed with the construction of the Canal in question.

Annex 5

TREATY OF LIMITS (CAÑAS-JUÁREZ), MANAGUA, 6 JULY 1857 (UNRATIFIED)

SOURCE : WWW.MANFUT.ORG/CRONOLOGIA/T-CANASJUAREZ.HTML

TRANSLATION

Cañas – Juárez Treaty, Managua, 6 July 1857

Gregorio Juárez and José María Cañas, special Commissioners; the first for the Supreme Government of Nicaragua, and the second for Costa Rica, to enter into a definite border treaty which divides both Republics and ends the disputes that until now have stalled the good understanding that should reign between them, for their mutual safety and exaltation; having exchanged our respective powers, which we found to be in good and due form, we have agreed on the following:

First: The Government of Nicaragua, as a sign of gratitude for the Government of Costa Rica, for its good offices on behalf of the Republic, for the solid determination and great sacrifices made for the cause of national independence, waives, takes and puts away every right on the District of Guanacaste, which is now called the Province of Moracia of the Republic of Costa Rica, to be understood, held, and acknowledged, from now and forever, as an integral part of said Republic, under the sovereign jurisdiction of said Government.

Second: As that Province of Moracia is located between the San Juan del Norte River and the South Sea, both parties agree that the border should be an imaginary line, drawn from a point in the middle of the Golfo de Salinas de Bolaños in the South Sea, up to a point below Castillo Viejo, that will be marked two English miles from the outside fortifications of said castle, downstream of the river, up to the aforementioned point; and whilst this one is made, Raudal del Mico, across the river known as Bartola, will be taken as a natural border marker on that side; and following the margin and the shore of said river, the same dividing line will follow down, until it reaches Punta de Castilla.

Third: The demarcation of said points and the imaginary line, will be done by two Commissioners appointed by each of the parties accompanied by an engineer; and if there are points that can serve as natural boundaries, along the entire line or in some parts, these will be preferred to the astronomical line, that eventually must be marked.

Fourth: The extremity of the aforementioned bordering line, in the Salinas Gulf, will be commonable to both Republics; and each one may use it at their convenience.

Fifth: The Republic of Costa Rica, as well as the one of Nicaragua, will have free use of the waters of the San Juan River, for navigation and transportation of articles of trade of import and export, observing customs legislation, and complying with the fiscal duties of each Republic, as well as those that will be taxed over the articles that will be brought in through their respective customs.

Sixth: The Nicaraguans that live in Costa Rica and the Costa Ricans that live in Nicaragua shall be respectively considered natural citizens of those countries, with the same rights to purchase and possess empty lots and privately-owned properties, as well as for the guarantee of both governments, concerning the exercise of those rights.

Seventh: The original products and manufactured articles of both republics, may be mutually imported, free of tax, and will only be subjected to the own and local municipal taxes, but the import of those articles that have been monopolized or stagnated by both governments in their own republics, shall not be authorized.

Eighth: Both governments agree that their respective authorities shall mutually turn over the prisoners for ordinary offences from the other country that seek shelter in their country, with a previous rogatory where it is shown a prison warrant against the offender. They also agree to provide safe asylum to political emigrants of both republics, and both governments cannot force one another to extradite the émigré. They must only keep the émigré away from the border, if this is requested by his country of origin.

Ninth: Both governments may detach the guard or guards that they may deem necessary to watch over fiscal duties in the environs of the bordering line marked in this agreement, although those guards may go into the territory of the other country, with previous notice and knowledge of that in which internment may be deemed necessary.

Tenth: This agreement shall be ratified, and its ratifications shall be exchanged within the shortest time possible.

In witness thereof, we sign this document in duplicate, in the City of Santiago de Managua, on the sixth day of July, of the year of the Lord of eighteen hundred fifty seven.

G.Juárez (signature) José M. Cañas (signature)

Colección de Documentos Históricos

Tratado Cañas-Juárez

(Managua, 6 de Julio de 1857)

Gregorio Juarez y José Maria Cañas Comisonados especiales, el primero por el Supremo Gobierno de Nicaragua y el segundo por el de Costa Rica para celebrar un tratado definitivo de limites que dibida ambas Repúblicas y termine las diferencias que hasta ahora habian retardado la buena inteligencia que debe reinar entre ellas para su mutua seguridad y engrandamiento; cangeados nuestros respectivos poderes que encontramos en buena y debida forma, hemos convenido en lo siguiente:

Primero: El Gobierno de Nicaragua en señal de gratitud hacia el de Costa Rica por sus buenos oficios en fabor de la República, por el desidido empeño y los grandes sacrificios que ha hecho por la causa de la independencia nacional. desiste, quita y aparta de todo derecho al Distrito de Guanacaste que lleva ahora la denominación de Provincia de Moracia de la República de Costa Rica para que se entienda, tenga y reconozca desde ahora para siempre como parte integrante de dicha República, bajo el dominio y sumo imperio de dicho Gobierno.

Segundo: Como dicha Provincia de Moracia se halla colocada entre el Rio San Juan del Norte y el Mar del Sur, convienen ambas partes en que el limite sea una linea imaginaria tirada desde un punto medio del Golfo de Salinas de Bolaños en el Mar del Sur hasta un punto abajo del Castillo Viejo que se señalará á dos millas inglesas de distancia medidas desde las fortificaciones exteriores de dicho Castillo, aguas abajo del Rio, hasta el expresado punto; y mientras éste se señala, se tendrá como punto natural del limite por aquella parte el Raudal del Mico frente del Rio llamado Bartola; y siguiendo la margen y orilla derecha del mismo Rio, continuará la misma linea divisoria por la misma, hasta llegar á Punta de Castilla.

Tercero: La fijación de dichos puntos y la linea imaginaria, seran trazados por dos Comisionados nombrados uno por cada parte acompañados de un ingeniero; y en el caso de encontrarse en el todo ó en parte de dicha linea puntos de sirban de limites naturales, serán estos preferidos á la linea astronómica que en último caso debe señalarse.

Cuarto: La estremidad de la predicha linea limitrofe, en el Golfo de Salinas, será comun a ambas Repúblicas; pudiendo cada una, por su lado, hacer el uso q.e le convenga.

Quinto: La República de Costa Rica lo mismo que la de Nicaragua, usarán libremente de las aguas de l Río San Juan para la navegación y transporte de articulos de comercio de importación y exportación, respetando las leyes de aduana, y satisfaciendo los derechos fiscales de cada una de dichas Repúblicas tiene impuestos o imponga en lo subsesivo sobre los articulos que se introduzcan por sus respectivas aduanas.

Sexto: Los nicaragüenses en Costa Rica y los costarricenses en Nicaragua, serán considerados respectivamente como naturales con los mismos derechos para la adquisición y conservacion de terrenos de propiedad particular y baldias, asi como p.a la garantia de ambos gobiernos en cuanto al uso de dichos derechos.

Septimo: Los productos y manufacturas naturales de ambas Reúblicas, pueden introducirse reciprocamente libres de todo impuesto fiscal, sugetos solamente á los de propios y advitrios municipales, pero no será permitida la introduccion de articulos monopolisados o estancados por los dos Gobiernos en sus respectivas Repúblicas.

Octavo: Ambos Gobiernos consienten en que sus autoridades respectivas entreguen mutuamente los reos de delitos comunes que da la una República se refugien en la otra, previo exhorto en que conste haberse decretado auto de prision contra el reo. E igualmente se comprometen á dar seguro asilo á los emigrantes por motivos políticos de ambas Repúblicas, sin que se pueda obligarse al uno por el otro Gobierno., á la extradicion del emigrado, sino solamente á alejarle de la frontera siempre que esto le sea pedido por el Gobierno, á quien pertenezca.

Noveno: Ambos Gobiernos pueden colocar el resguardo ó resguardos que crean convenientes para el celo de los derechos fiscales en las inmediaciones de la linea limítrofe marcada en el presente convenio, aunque dichos resguardos se internen en el terreno de la otra República con previo aviso y conocimiento de aquel en que se esta internacion se crea necesaria.

Decimo: El actual convenio será ratificado y sus ratificaciones cambiadas dentro del menor término posible .

En fé de lo cual firmamos el presente en dos ejemplares, en la Ciudad de Santiago de Managua a los seis dias del mes de Julio del año del Señor de mil ochocientos cincuenta y siete.

G. Juárez (rúbrica) José M. Cañas (rúbrica)
A.N.C.R., Sec. Adm., Arch, Congreso, Exp. 5199, fls. 5-6 v.- (Transcrito por Sibaja - Zelaya en " La Anexión de Nicoya, Doc. N0. 12, pág. 160 -162)

Versión internet: Eduardo Manfut P.
Recopilación Antonio Esgueva
Universidad Centroaméricana
Facultad de Ciencias Jurídicas
Instituto de Historia de Nicaragua y Centroamérica

Regresa al siglo XIX

Annex 6

CONVENTION OF PEACE (CAÑAS-MARTÍNEZ), RIVAS, 8 DECEMBER 1857 (ARTICLES 8, 9 SUBJECT TO RATIFICATION, UNRATIFIED ; REMAINDER IN FORCE ON SIGNATURE)

SOURCE : 49 *BFSP* 1222-1224

BRITISH AND FOREIGN
STATE PAPERS.

1858—1859.

VOL. XLIX.

COMPILED BY THE LIBRARIAN AND KEEPER OF THE PAPERS,
FOREIGN OFFICE.

London:
WILLIAM RIDGWAY, 169, PICCADILLY.

1867.

CONVENTION of Peace, between Costa Rica and Nicaragua. Signed at Rivas, December 8, 1857.

(Translation.)

THE President, General Don Tomas Martinez, as actual Commander-in-chief of the army of the Republic, of the one part, and of the other part General José Maria Cañas, and Licentiate Don J. Emiliano Cuadra, Ministers Plenipotentiary and Envoys Extraordinary of the Republic of Costa Rica, with the desire of putting an end to the misunderstanding which has unfortunately arisen between Nicaragua and Costa Rica, which never ought to exist between two neighbouring and sister Republics, and which it is more than ever indispensable to terminate under the circumstances of their common independence being threatened by a fresh invasion of filibusters who have already made their invasion upon the river San Juan. The Legation of Costa Rica being sufficiently authorized, according to the tenor of the powers conferred by that Republic, which were presented for exchange and found to be in good and due form; and the Commander-in-chief in campaign acting in regard to arrangements for peace as in similar cases, without omitting to include other points which it has been considered desirable to embrace in this Convention, although, in regard to these, it is to be observed that they are agreed to "sub spe ratis," and are duly subject to the approbation of the Supreme Powers of this Republic, have agreed upon the following arrangements for peace:

I. Nicaragua shall again come into possession of Castillo Viejo, which fortification the Legation of Costa Rica has been willing to restore from the beginning; but this is not to put any obstacle in the way should Costa Rica think it necessary, on account of danger of invasion by filibusters, to station forces of her own at the same point, on such conditions as to number, length of time, and the rest, as may be agreed upon between the two Governments according to circumstances.

II. While Costa Rica retains the steamers, she shall be allowed to keep at such part of the river as she may think fit, the guard which is intended to serve in them, the total number of which, on board or ashore, shall not exceed 80 men. The persons employed by Nicaragua shall also aid and assist in the care and preservation of the said steamers.

III. The Government of Costa Rica shall not dispose of the steamers without giving previous notice of the agreement to the Government of Nicaragua, and hearing its opinion as to the inconveniences which the alienation may occasion; at all events, Nicaragua shall have a right to the preference in taking all or any of them on the same conditions.

IV. So long as the steamers belong to Costa Rica, her Government shall only make use of them for commercial purposes, and subject in all things to the police and exchequer laws of Nicaragua, the same as the vessels of that Republic which trade upon the river and the lake.

V. The forces of Nicaragua, on receiving Castillo Viejo, shall also receive all the munitions of war and other goods belonging to that Republic; and the forces of Costa Rica have a right to take away all the elements of war and other goods which may exist there, and belong to that country.

VI. Costa Rica shall evacuate the point of Tortuga, as has been arranged by the Legation of that Republic to take place without delay; and as her object in maintaining the picket at that point has been to guard provisions and munitions of war intended for the Costa Rican forces in the castle and the steamers, so long as she keeps them, she is allowed to have her picket at the Virgin to the number of 10 men.

VII. By the present Convention, and in consideration of the increased expenses which Costa Rica has been put to in the national war, all claims cease on the part of Nicaragua to which she may consider she has a right, as originating from the disagreements which are now put an end to. Costa Rica, on her part, in witness of the good and cordial understanding now established, gives up any balance which there is, or might be, in her favour and against Nicaragua, on whatever ground.

VIII. The boundaries between Nicaragua and Costa Rica shall be those which were established in the last Treaty concluded at Managua, in July of the present year, between the Commissioners, Licenciate D. Gregario Juarez, and General D. José Maria Cañas, or else those which have been recognized of old as the proper ones of the district of Nicoya, and within which the authorities of that district have always exercised their jurisdiction. The Government of Costa Rica shall state which of these two demarcations is adopted, and this is to be included in the act of the ratification of the present Convention. If the second be adopted by that Government, and any difficulties should occur in fixing it from point to point, they shall be decided by arbitrators, to be appointed by the two Governments, in order to come to a definitive resolution, with the assistance of the necessary documents.

IX. If, from any unforeseen event, the engagement concerning transit, concluded in The United States by the Minister Plenipotentiary of Nicaragua, D. Antonio José de Irisari, with the Canalisation Company, should be ineffective for that Republic, she shall not enter into any other contract concerning transit, without first taking the opinion of the other Governments of Central America.

X. Articles VIII and IX are subject to the respective ratifications. The others are definitively concluded by both parties.

In witness whereof they sign two copies of the same tenor, which are countersigned by the respective Secretaries.

In the city of Rivas, 8th December, 1857.

(L.S.) TOMAS MARTINEZ.
(L.S.) JOSE MARIA CANAS.
(L.S.) JOSE EMILIANO QUADRA.

MAXIMO JEREZ, *Secretary*.
JOSE ANTONIO CHAMORRO, *Secretary*.

TRATADO DE PAZ ENTRE COSTA RICA Y NICARAGUA

El General Presidente, don Tomás Martínez, como actual encargado del mando en jefe del ejército de Nicaragua, por una parte, y los señores Generales don José María Cañas y licenciado don Emiliano Quadra, Ministros Plenipotenciarios y Enviados Extraordinarios de la República de Costa Rica por otra: con el deseo de poner término a las desavenencias que desgraciadamente se han suscitado entre Costa Rica y Nicaragua, las que si nunca debieron existir entre dos Repúblicas vecinas y hermanas, es aún más indispensable hacer que desaparezcan en circunstancias en que su común independencia se halla amenazada por una nueva invasión de filibusteros, que ya ha ejecutado su incursión sobre el río San Juan.

Hallándose la Legación de Costa Rica competentemente autorizada según el tenor de los Poderes que le han sido conferidos por el Gobierno de aquella República; y que para el canje presentó y se encontraron en buena y debida forma:

Y HACIENDO USO EL General Presiente de Nicaragua de las facultades naturales de un general en Jefe en campaña. Respecto a arreglos de paz, conforme a los casos emergentes, sin dejar de comprender otros puntos que se ha considerado interesante abrazar ene l presente Convenio, bien que observando en cuanto a éstos el carácter de acordados *sub spé rati* y con la debida sujeción a la aprobación de los Supremos Poderes de la República, han celebrado el siguiente

ARREGLO DE PAZ:

Artículo 1.°

Nicaragua volverá a entrar en posesión del Castillo Viejo, cuya fortificación ha estado dispuesta a devolverle la Legación de Costa Rica desde su ingreso; pero no servirá de obstáculo para que Costa rica, en caso de creerlo conveniente por peligros de invasión de filibusteros, sitúe también en el mismo punto fuerzas suyas en el número, por el tiempo y bajo las demás estipulaciones que con relación a los casos que ocurran, se acuerden por los dos Gobiernos.

Artículo 2.°

Mientras Costa Rica tenga los vapores, se le permitirá tener en el punto del río que crea conveniente la custodia destinada a servir en ellos, cuyo número total a bordo o en tierra, no podrá exceder de treinta hombres.

Los empleados de Nicaragua cuidarán también y ayudarán a la custodia y a la conservación de dichos vapores.

Artículo 3.°

El gobierno de Costa Rica no podrá enajenar los vapores sin dar previo conocimiento del contrato al de Nicaragua, y oír su opinión sobre los inconvenientes que la enajenación pueda tener.

En toda caso, Nicaragua tendrá derecho de preferencia a tomarlos todos o algunos de ellos, bajo igualdad de condiciones.

Artículo 4.°

Mientras los vapores pertenezcan a Costa Rica, su Gobierno no podrá hacer de ellos sino usos mercantes, y con sujeción en todo a las leyes de Policía y de Hacienda de Nicaragua, de la misma manera que las embarcaciones de esta República, que trafican en el río y el lago.

Artículo 5.°

Al recibir las fuerzas de Nicaragua El Castillo Viejo, recibirán igualmente todos los útiles de guerra y demás enseres pertenecientes a la República; y los de Costa Rica tienen el derecho de sacar todos los elementos de guerra y otros útiles que allí existen y pertenecer a aquel país.

Artículo 6.°

Costa Rica evacuará el punto de Tortuga, como también ha estado dispuesta la Legación de aquella República a que se verifique sin demora; y como el objeto que ha tenido en mantener un piquete en aquel punto ha sido el de custodiar víveres y elementos de guerra, destinados a las fuerzas costarricenses que han existido en El Castillo y los vapores, se le permite tener mientras los conserve, un piquete en La Virgen, hasta un número de diez hombres.

Artículo 7.°

Por el presente Convenio y en consideración a los crecidos gastos que Costa Rica impendió en la guerra nacional, cesa de parte de Nicaragua toda reclamación a que crea tener derecho, como originada de las desavenencias a que se pone término costa Rica, por la suya, en testimonio de la buena y cordial inteligencia que queda establecida, se parte de cualquiera créditos que tenga o crea tener a su favor y contra Nicaragua, hasta esta fecha, por cualesquiera títulos.

Artículo 8.°

Los límites entre Costa Rica y Nicaragua serán los que se establecieron en el último Tratado celebrado en Managua, en julio del corriente año, entre los señores Comisionados General don José María Cañas y Licenciado dona Gregorio Juárez: o bien los que de antiguo han sido conocidos como propios del Partido de Nicoya y dentro de los cuales ejercieron constantemente sus actos de jurisdicción las autoridades del mismo Partido.

El Gobierno de Costa Rica designará cuál de estas dos demarcaciones queda adoptada, debiéndose comprender esto en el acto de la ratificación del presente Convenio.

Si por el mismo Gobierno se adoptase la segunda; y al fijarla punto a punto ocurrieren algunas dificultades, se decidirán por un arbitramento que precisamente deben nombrar los dos gobierno, a fin de que son presencia de los documentos resuelva definitivamente.

Artículo 9.°

Si por algún incidente imprevisto quedare para Nicaragua insubsistente el compromiso contraído por el Convenio sobre tránsito celebrado en los Estados Unidos, por el Ministro Plenipotenciario de esta República, don Antonio José de Irisarri, con la Compañía de Canalización, no podrá celebrar ningún otros contrato sobre tránsito, sin oír antes la opinión de los demás Gobiernos de la América Central.

Los artículos 8.° y 9.° quedan sujetos a las respectivas ratificaciones y los demás concluidos definitivamente por ambas partes.

En fe de lo cual, firmamos dos ejemplares de un tenor, refrendados por los respectivos Secretarios, en la ciudad de Rivas, a los ocho días del mes de diciembre del año del Señor de mil ochocientos cincuenta y siete.

Tomás Martínes. José María Cañas.

T. Emiliano Quadra.

Máximo Jerez,
Secretario.

José Antonio Chamorro,
Secretario.

Annex 7

COSTA RICA-NICARAGUA, TREATY OF LIMITS (CAÑAS-JÉREZ), SAN JOSÉ, 15 APRIL 1858

(A) ORIGINAL VERSION IN SPANISH

SOURCE : *COLECCIÓN DE LAS LEYES, DECRETOS Y ORDENES EXPEDIDOS POR LOS SUPREMOS PODERES LEGISLATIVO Y EJECUTIVO DE COSTA RICA EN EL AÑO DE 1858*, TOMO XV
(SAN JOSÉ : IMPRENTA DE LA PAZ, 1871), PP. 174-177, 182-188

(B) ENGLISH TRANSLATION : COSTA RICAN VERSION SUBMITTED TO CLEVELAND

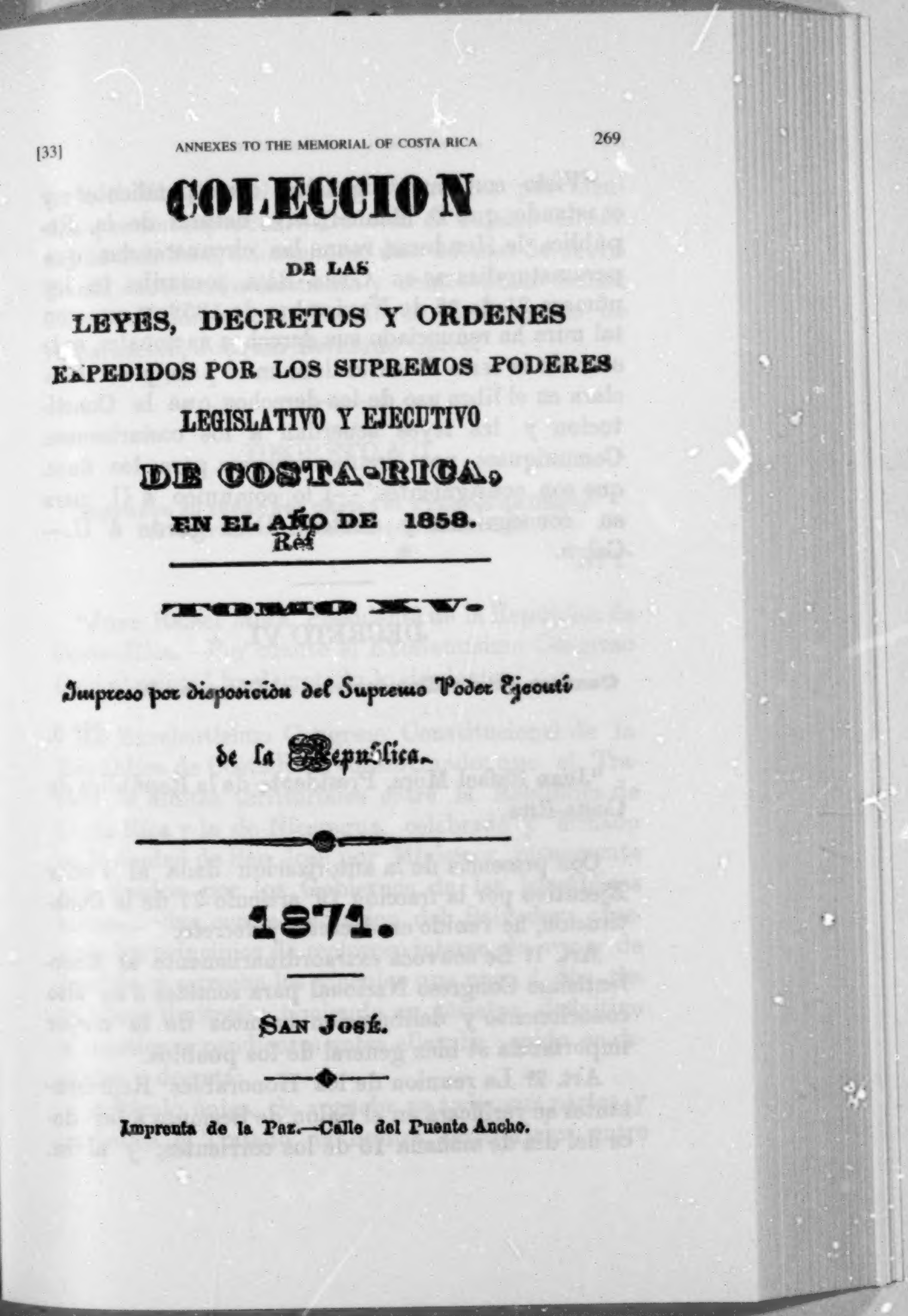
SOURCE : PEDRO PÉREZ ZELEDÓN, *ARGUMENT ON THE QUESTION OF THE VALIDITY OF THE TREATY OF LIMITS BETWEEN COSTA RICA AND NICARAGUA* (WASHINGTON : GIBSON BROS., 1887), DOCUMENT NO. 1, PP. 185-191

(C) ENGLISH TRANSLATION : NICARAGUAN VERSION SUBMITTED TO CLEVELAND

SOURCE : *THE CASE OF THE REPUBLIC OF NICARAGUA* (WASHINGTON, 1887), APPENDIX B, PP. 34-39

(D) ENGLISH TRANSLATION

SOURCE : 48 *BFSP* 1049-1052



COLECCION

DE LAS

LEYES, DECRETOS Y ORDENES

EXPEDIDOS POR LOS SUPREMOS PODERES

LEGISLATIVO Y EJECUTIVO

DE COSTA-RICA,

EN EL AÑO DE 1858.

Réf

TOMO XV.

Impreso por disposicion del Supremo Poder Ejecuti

de la Republica.

1871.

SAN JOSÉ.

Imprenta de la Paz.—Calle del Puente Ancho.

"Visto con las diligencias correspondientes y constando: que D. Manuel Leiva natural de la República de Honduras, reune las circunstancias que para naturalizarse en Costa-Rica prescribe la ley número 21 de 25 de Noviembre de 1852; y que con tal mira ha renunciado sus derechos nacionales, se le concede la carta de naturaleza en el pais, y se le declara en el libre uso de los derechos que la Constitucion y las leyes acuerdan á los costaricenses. Comuníquese por circular impresa para los fines, que son consiguientes."—I lo comunico á U. para su conocimiento y efectos.—Dios gurde á U.—Calvo.

DECRETO VI.

Convoca extraordinariamente al Congreso Nacional.

Nº 3.

"Juan Rafael Mora, Presidente de la República de Costa-Rica.

Con presencia de la autorizacion dada al Poder Ejecutivo por la fraccion 19ª artículo 77 de la Constitucion, he venido en decretar y decreto:

Art. 1º Se convoca extraordinariamente al Excelentísimo Congreso Nacional para someter á su alto conocimiento y deliberacion asuntos de la mayor importancia al bien general de los pueblos.

Art. 2º La reunion de los Honorables Representantes se verificará en el Salon de Sesiones á las doce del dia de mañana 15 de los corrientes; y al intento el Ministro del Interior dictará las providencias que corresponden.—Dado en el Palacio Nacional en San José, á los catorce dias del mes de Abril de mil ochocientos cincuenta y ocho.—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Gobernacion, Joaquin Bernardo Calvo."

DECRETO VII

Aprueba en todas sus partes el Tratado de limites territoriales celebrado con Nicaragua.

Nº 1°

"Juan Rafael Mora, Presidente de la República de Costa-Rica.—Por cuanto el Excelentísimo Congreso Constitucional ha decretado lo siguiente.

El Excelentísimo Congreso Constitucional de la República de Costa-Rica, considerando: que el Tratado de límites territoriales entre la República de Costa-Rica y la de Nicaragua, celebrado y firmado en la ciudad de San José por Ministros plenamente autorizados por los Gobiernos de las Repúblicas mencionadas, con la mediacion del Salvador, obsequia los principios de recíproco interes, de paz y de justicia, y estrecha los vínculos que unen á dos Repúblicas limítrofes, poniendo un término definitivo á cuestiones pendientes entre ellas; ha venido en decretar y decreta:

Artículo único. Se aprueba en todas sus partes y artículos el Tratado de límites territoriales entre

Costa-Rica y Nicaragua, firmado en esta ciudad el quince de los corrientes por Plenipotenciarios autorizados al efecto.—Al Supremo Poder Ejecutivo.—Dado en el Salon de Sesiones, en San José, á los dieziseis dias del mes de Abril de mil ochocientos cincuenta y ocho.—Rafael G. Escalante, Presidente.—Juan Gonzalez, Secretatio.—Manuel Joaquin Gutierrez, Secretario.—Por tanto: EJECUTESE.—Palacio Nacional, San José, Abril dieziseis de mil ochocientos cincuenta y ocho.—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Relaciones Exteriores, Nazario Toledo."

DECRETO VIII.

Destina a uno y otro lado de las riberas del rio Sarapiqui, una faja de tierra baldia para agraciar a los costaricenses pobres.

Nº 3.

"Rafael G. Escalante, Vice-Presidente en ejercicio del Supremo Poder Ejecutivo de la República de Costa-Rica.

Deseoso de favorecer á los costaricenses pobres concediéndoles de gracia un terreno capaz de mantener con sus productos á sus familias, y con la mira, al mismo tiempo de promover y facilitar la inmigracion de extrangeros en el pais, haciéndoles gracia de los terrenos mas feraces y mejor situados para el comercio, decreto:

Art. 1º Se destina en ambas riberas del rio de

Sarapiquí, y en toda su estension hasta su confluencia con el rio de San Juan, una faja de tierra baldía de 500 varas de ancho, dedicada esclusivamente á agraciar á los costaricenses pobres, y á los habitantes laboriosos de cualquiera nacion que quieran poblarla y cultivarla con sujecion á las reglas establecidas en este decreto.

Art. 2º Se concede de gracia á cada poblador un cuadro de tierra de cinco manzanas ó 50,000 varas cuadradas, tomando de frente sobre el rio cien varas, y 500 de fondo, cuidándose de dejar entre una y otra propiedad una calle de veinte varas de ancho, que facilite el acceso á los demas terrenos baldíos que quedan detras de los ya dichos.

Art. 3º Gozarán de la gracia los pobladores que hayan comenzado á hacer uso de ella, dentro del término de dos años contados desde esta fecha, y perderán su derecho á la propiedad del terreno los que dentro de cinco años contados tambien desde hoy no lo tengan cultivado.

Art. 4º El agraciado que haya llenado las condiciones del artículo anterior, á mas de la gracia antedicha, tendrá derecho á que se le dé un cuadro igual al que tenga cultivado á la espalda de este, para usarlo como le convenga.

Art. 5º Si el poblador, ademas de los cuadros que se le conceden por los artículos precedentes, quisiere emprender tambien en hacienda de cacao, y la plantare dentro de los cinco años que señala el art. 3º, tendrá derecho á la propiedad del terreno que tenga así cultivado, con tal que esté distante mil varas por lo menos, de la orilla del Sarapiquí.

DECRETO X.

Tratado de limites entre Nicaragua y Costa-Rica.

N° 4.

“Rafael G. Escalante, Vice-Presidente de la República de Costa-Rica en ejercicio del Supremo Poder Ejecutivo.

Habiéndose concluido y firmado en esta ciudad el quince de Abril del presente año, un Tratado de límites territoriales entre la República de Costa-Rica y la República de Nicaragua por Plenipotenciarios autorizados al intento, el cual ha sido ratificado por ambas partes, y cuyo tenor con la ratificacion que por la muestra se le ha dado es como sigue.

“Juan Rafael Mora Presidente de la República de Costa-Rica en la América Central.

Por cuanto entre la República de Costa-Rica y la República de Nicaragua se concluyó y firmo en esta ciudad el quince del mes de Abril del presente año de mil ochocientos cincuenta y ocho, por medio de Plenipotenciarios debida y suficientemente autorizados por ambas partes, un Tratado de límites territoriales entre Nicaragua y Costa-Rica, cuyo tenor palabra por palabra es como sigue:

“Máximo Jerez, Ministro Plenipotenciario del Gobierno de la República de Nicaragua, y José Maria Cañas, Ministro Plenipotenciario del Gobierno de la República de Costa-Rica: encargados por nuestros comitentes de celebrar un Tratado de límites entre ambas Repúblicas, que ponga término á las diferencias que han retardado la mejor y mas perfecta inteligencia y armonía que deben reinar entre ellas, para su comun seguridad y engrandecimiento: habiendo verificado el canje de nuestros respectivos poderes, bajo el exámen que de ellos hizo el Honorable Sr. D. Pedro Rómulo Negrete, Ministro Plenipotenciario del Gobierno de la República del Salvador, en ejercicio de las nobles funciones de mediador fraternal en estas negociaciones, quien los encontró en buena y debida forma; de la misma manera que por nuestra parte fueron hallados bastantes los que exhibió el mismo Sr. Ministro: discutidos con el detenimiento necesario los puntos convenientes, con la asistencia y auxilio del Representante del Salvador; hemos convenido y celebrado el siguiente

TRATADO DE LIMITES ENTRE NICARAGUA Y COSTA-RICA.

Art. 1º La República de Nicaragua y la República de Costa-Rica, declaran en los términos mas expresos y solemnes: que si por un momento llegaron á disponerse para combatir entre sí por diferencias de límites y por razones que cada una de las Altas Partes contratantes consideró legales y de honor, hoy, despues de repetidas pruebas de buena inteligencia, de principios pacíficos y de verdadera confraternidad, quieren y se comprometen formalmente á procurar, que la paz, felizmente restablecida, se consolide cada dia mas y mas entre ambos Gobiernos y entre ambos pueblos, no solamente para el bien y provecho de Nicaragua y Costa-Rica, sino para la ventura y prosperidad que en cierta manera redunda en beneficio de nuestras hermanas las demas Repúblicas de Centro-América.

La línea divisoria de las dos Repúblicas, partiendo del mar del Norte, comenzará en la extremidad de Punta de Castilla, en la desembocabura del rio de San Juan de Nicaragua, y continuará marcándose con la márgen derecha del expresado rio, hasta un punto distante del Castillo Viejo tres millas inglesas, medidas desde las fortificaciones exteriores de dicho Castillo, hasta el indicado punto. De allí partirá una curva, cuyo centro serán dichas obras, y distará de él tres millas inglesas en toda su progresion, terminando en un punto que deberá distar dos millas de la ribera del rio aguas arriba del Castillo. De allí se continuará en direccion al rio Sapoá, que desagua en el Lago de Nicaragua, siguiendo un curso que diste siempre dos millas de la márgen derecha del rio de San Juan con sus circunvoluciones hasta su orígen en el Lago, y de la márgen derecha del propio Lago, hasta el expresado rio de Sapoá, en donde terminará esta línea paralela á dichas riberas. Del punto en que ella coincida con el rio Sapoá, el que por lo dicho, debe distar dos millas del Lago, se tirará una recta astronómica hasta el punto céntrico de la Bahia de Salinas, en el mar del Sur, donde quedará terminada la demercacion del territorio de las dos Repúblicas contratantes.

Art. 3º Se practicarán las medidas correspondientes á esta línea divisoria, en el todo ó en parte, por comisionados de los dos Gobiernos, poniéndose estos de acuerdo para señalar el tiempo en que haya de verificarse la operacion. Dichos comisionados tendrán la facultad de desviarse un tanto de la curva al rededor del Castillo, de la paralela á las márgenes del rio y el Lago, ó de la recta astronómica entre Sapoá y Salinas, caso que en ello puedan acordarse para buscar mojones naturales.

Art. 4º La Bahía de San Juan del Norte, así como la de Salinas, serán comunes á ambas Repúblicas, y de consigniente lo serán sus ventajas, y la obligacion de concurrir á su defensa. Tambien está obligado Costa-Rica por la parte que le corresponde en las márgenes del rio de San Juan, que en los mismos términos que por tratados lo está Nicaragua, á concurrir á la guarda de él, del propio modo que concurrirán las dos Repúblicas á su defensa en caso de agresion exterior; y lo harán con toda la eficacia que estuviese á su alcance.

Art. 5° Mientras tanto que Nicaragua no recobre la plena posesion de todos sus derechos en el puerto de San Juan del Norte, la Punta de Castilla será de uso y posesion enteramente comun igual para Nicaragua y Costa-Rica, marcándose para entre tanto dure esta comunidad, como límite de ella, todo el trayecto del rio Colorado. Y ademas se estipula que mientras el indicado puerto de San Juan del Norte haya de existir con la calidad de franco, Costa-Rica no podrá cobrar á Nicaragua derechos de puerto en Punta de Castilla.

Art. 6º La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del rio de San Juan desde su salida del Lago, hasta su desembocadura en el Atlántico; pero la República de Costa-Rica tendra en dichas aguas, los derechos perpetuos de libre navegacion, desde la espresada desembocadura hasta tres millas inglesas ántes de llegar al Castillo Viejo, con objetos de comercio, ya sea con Nicaragua ó al interior de Costa-Rica, por los rios de San Cárlos ó Sarapiquí, ó cualquiera otra via procedente de la parte que en la ribera del San Juan se establece corresponder á esta República. Las embarcaciones de uno ú otro pais podrán indistintamente atracar en las riberas del rio en la parte en que la navegacion es comun, sin cobrarse ninguna clase de impuestos, á no ser que se establezcan de acuerdo entre ambos Gobiernos.

Art. 7º Queda convenido que la division territorial que se hace por este Tratado, en nada debe entenderse contrariando las obligaciones consignadas, ya sea en tratados políticos, ó en contratos de canalizasion ó de tránsito celebrados por parte de Nicaragua con anterioridad al conocimiento; y ántes bien se entenderá que Costa-Rica asume aquellas obligaciones en la parte que corresponde á su territorio, sin que en manera alguna se contrarie el dominio eminente y derechos de soberania que tiene en el mismo.

Art. 8º Si los contratos de canalizacion ó de tránsito celebrados antes de tener el Gobierno de Nicaragua conocimiento de este convenio, llegasen á quedar insubsistentes por cualquiera causa, Nicaragua se compromete á no concluir otro sobre los espresados objetos, sin oir ántes la opinion del Gobierno de Costa-Rica, acerca de los inconvientes que el negocio pueda tener para los dos paises; con tal que esta opinion se emita dentro de treinta dias despues de recibida la consulta; caso que el de Nicaragua manifieste ser urgente la resolucion; y no dañándose en el negocio los derechos naturales de Costa-Rica, este voto será consultivo.

Art. 9º Por ningun motivo, ni en caso y estado de guerra, en que por desgracia llegasen á encontrarse las Repúblicas de Nicaragua y Costa-Rica, les será permitido ejercer ningun acto de hospitalidad entre de ellas en el puerto de San Juan del Norte, ni en el rio de este nombre y lago de Nicaragua.

Art. 10. Siendo lo estipulado en el artículo anterior esencialmente importante á la debida guarda del puerto y del rio contra agresiones exteriores que afectarian los intereses generales del pais, queda su estricto cumplimiento, bajo la especial garantia, que á nombre del Gobierno mediador está dispuesto á dar, y en efecto da su Ministro Plenipotenciario presente, en virtud de las facultades que al intento declara estarle conferidas por su Gobierno.

Art. 11. En testimonio de la buena y cordial inteligencia que queda establecida entre las Repúblicas de Nicaragua y Costa-Rica, renuncian á todo crédito activo que entre sí tengan por cualesquiera títulos hasta la asignatura del presente Tratado; é igualmente prescinden las Altas Partes contratantes, de toda reclamacion, por indemnizaciones á que se considerasen con derecho.

Art. 12. Este Tratado será ratificado, y sus ratificaciones cambiadas, dentro de cuarenta dias de la signatura, en Santiago de Managua.—En fé de lo cual firmamos el presente por triplicado, en union del Honorable Señor Ministro del Salvador, refrendándole los respectivos Secretarios en la ciudad de San José, capital de Costa-Rica, á los quince dias del mes de Abril del año del Señor de mil ochocientos cincuenta y ocho.—(F.) Máximo Jerez.—(F.) José M, Cañas.—(F.) Pedro Rómulo Negrete.—Por tanto, habiendo visto y examinado el preinserto Tratado, previa la aprobacion del Exmo. Congreso Nacional, y en virtud de la facultad que me concede la Constitucion, lo he aceptabo, ratificado y confirmado, y por las presentes lo acepto, ratifico y confirmo, prometiendo observar y hacer observar fielmente todo lo que en él se contiene, sin permitir que se contravenga á él de manera alguna.—En fé de lo cual he hecho expedir las presentes, firmadas de mi mano, selladas con el gran sello de la República, y refrendadas por el Ministro de Estado en el Despacho de Relaciones Exteriores en la ciudad de San José á los dieziseis dias del mes de Abril de mil oohocientos cincuenta y ocho.—(L. S.)—Juan Rafael Mora.—El Ministro de Estado en el Despacho de Relaciones Exteriores, Nazario Toledo."—Y por cuanto se han canjeado debidamente las respectivas ratificaciones en la ciudad de Rivas de Nicaragua el veintiseis del espresado mes de Abril del presente año de mil ochocientos cincuenta y ocho;—Por tanto:—Hágase público dicho Tratado de límites territoriales; y téngase por obligatorio para la República de Costa-Rica, sus ciudadanos y habitantes, en todas sus partes, artículos y cláusulas; observándose y cumpliéndose fiel y exactamente en los términos que espresan nuestras letras de ratificacion.—Dado, firmado de mi mano, bajo el sello de la República, y refrendado por el Ministro de Estado en el Desdacho de Gobernacion, en el Palacio Nacional en San José, á los diez dias del mes de Mayo de mil ocnocientos cincuenta y ocho.—(L. S.)—Rafael G. Escalante.—El Ministro de Estado en el Despacho de Gobernacion, Joaquin Bernardo Calvo."

DECRETO XI.

Hace aplicable la pena de prevaricacion de que habla el articulo 1385, parte 3ª del Codigo general a los funcionarios publicos que administran justicia.

Nº 5.

"Rafael G. Escalante, Vice-Presidente de la República de Costa-Rica en ejercicio del Supremo Poder Ejecutivo.

Habiéndose suscitado dudas sobre la verdadera inteligencia de los artículos 1385 parte 3ª del Código general, 100 del decreto adicional nº 24 de 1º de Junio de 1842, y 2º de la declaratoria nº 24 de 3 de Octubre de 1850; siendo ademas las penas establecidas en aquellas leyes excesivamente severas en las presentes circunstancias, por haberse logrado ya que los Códigos de la República penetrasen en todas las relaciones de la vida social; y convencido el Gobierno de que una interpretacion rigorosa de tales disposiciones, impediría el desarrollo científico de la legislacion patria, decreto:

Art. 1º La pena de prevaricacion que ordena el artículo 1385 parte 3ª del Código general, es aplicable solamente á los funcionarios públicos que administran justicia; es decir, á los Magistrados, Jueces y Alcaldes, y á los escribanos cuando los haya en la

ARGUMENT

ON THE QUESTION OF THE VALIDITY OF THE TREATY OF LIMITS BETWEEN COSTA RICA AND NICARAGUA

AND

OTHER SUPPLEMENTARY POINTS CONNECTED WITH IT,

SUBMITTED TO THE

Arbitration of the President of the United States of America,

FILED ON BEHALF OF THE GOVERNMENT OF COSTA RICA

BY

PEDRO PÉREZ ZELEDÓN,

ITS ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY
IN THE UNITED STATES.

(TRANSLATED INTO ENGLISH BY J. I. RODRIGUEZ.)

16 JAN

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1887.

DOCUMENTS.

No. 1.

Treaty of Limits between Costa Rica and Nicaragua, concluded April 15th, 1858.

We, Máximo Jerez, Minister Plenipotentiary of the Government of the Republic of Nicaragua, and José Maria Cañas, Minister Plenipotentiary of the Government of the Republic of Costa Rica, having been entrusted by our respective Governments with the mission of adjusting a treaty of limits between the two Republics, which should put an end to all the differences which have obstructed the perfect understanding and harmony that must prevail among them for their safety and prosperity, and having exchanged our respective powers, which were examined by Hon. Señor Don Pedro R. Negrete, Minister Plenipotentiary of the Government of the Republic of Salvador, exercising the functions of fraternal mediator in these negotiations, who found them to be good and in due form, as we on our part also found good and in due form the powers exhibited by the said Minister, after having discussed with the necessary deliberation all the points in question, with the assistance of the representative of Salvador who was present, have agreed to and adjusted the following Treaty of Limits between Nicaragua and Costa Rica.

Article I.

The Republic of Nicaragua and the Republic of Costa Rica declare in the most solemn and express terms that if for one moment they were about to enter into a struggle for reason of limits and for others which each one of the high contracting parties considered to be legal and a matter of honor, now after having given each other repeated proofs of good understanding, peaceful principles, and true fraternity, they are willing to bind themselves, as they formally do, to secure that the peace happily re-established should be each day more and more affirmed between the Government and the people of both nations, not only for the good and advantage of Nicaragua and Costa Rica, but for the happiness and prosperity which, to a certain extent, our sisters, the other Central American Republics, will derive from it.

ARTICLE II.

The dividing line between the two Republics, starting from the Northern Sea, shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river up to a point three English miles distant from Castillo Viejo, said distance to be measured between the exterior works of said castle and the above-named point. From here, and taking the said works as centre, a curve shall be drawn along said works, keeping at the distance of three English miles from them, in its whole length, until reaching another point, which shall be at the distance of two miles from the bank of the river on the other side of the castle. From here the line shall continue in the direction of the Sapoá river, which empties into the Lake of Nicaragua, and it shall follow its course, keeping always at the distance of two miles from the right bank of the San Juan river all along its windings, up to reaching its origin in the lake; and from there along the right shore of the said lake until reaching the Sapoá river, where the line parallel to the bank and shore will terminate. From the point in which the said line shall coincide with the Sapoá river—a point which, according to the above description, must be two miles distant from the lake—an astronomic straight line shall be drawn to the central point of the Salinas Bay in the Southern Sea, where the line marking the boundary between the two contracting Republics shall end.

Article III.

Such surveys as may be required to locate this boundary, whether in whole or in part, shall be made by Commissioners appointed by the two Governments; and the two Governments shall agree also as to the time when the said survey shall be made. Said Commissioners shall have the power to somewhat deviate from the curve around the castle, from the line parallel to the banks of the river and the lake, or from the astronomic straight line between Sapoá and Salinas, if they find that natural land-marks can be substituted with advantage.

Article IV.

The Bay of San Juan del Norte, as well as the Salinas Bay, shall be common to both Republics, and, therefore, both the advantages of their use and the obligation to contribute to their defence shall also be common. Costa Rica shall be bound, as far as the portion of the banks of the San Juan river which correspond to it is concerned, to contribute to its custody in the same way as the two Republics shall contribute to the defence of the river in case of external aggression; and this they shall do with all the efficiency within their reach.

Article V.

As long as Nicaragua does not recover the full possession of all her rights in the port of San Juan del Norte, the use and possession of Punta de Castilla shall be common and equal both for Nicaragua and Costa Rica; and in the meantime, and as long as this community lasts, the boundary shall be the whole course of the Colorado river. It is furthermore stipulated that, as long as the said port of San Juan del Norte remains a *free* port, Costa Rica shall not charge Nicaragua any custom duties at Punta de Castilla.

ARTICLE VI.

The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river, which is hereby declared to belong to Costa Rica. The vessels of both countries shall have the power to land indiscriminately on either side of the river, at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments.

ARTICLE VII.

It is agreed that the territorial division made by this treaty cannot be understood as impairing in any way the obligations contracted whether in public treaties or in contracts of canalization or public transit by the Government of Nicaragua previous to the conclusion of the present treaty; on the contrary, it is understood that Costa Rica assumes those obligations, as far as the portion which corresponds to its territory is concerned, without injury to the eminent domain and sovereign right which it has over the same.

ARTICLE VIII.

If the contracts of canalization or transit entered into by the Government of Nicaragua previous to its being informed of the conclusion of this treaty should happen to be invalidated for any reason whatever, Nicaragua binds herself not to enter into any other arrangement for the aforesaid purposes without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of 30 days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory.

ARTICLE IX.

Under no circumstances, and even in case that the Republics of Costa Rica and Nicaragua should unhappily find themselves in a state of war, neither of them shall be allowed to commit any act of hostility against the other, whether in the port of San Juan del Norte, or in the San Juan river, or the Lake of Nicaragua.

ARTICLE X.

The stipulation of the foregoing article being essentially important for the proper custody of both the port and the river against foreign aggression, which would affect the general interests of the country, the strict performance thereof is left under the special guarantee which, in the name of the mediator Government, its Minister Plenipotentiary herein present is ready to give, and does hereby give, in use of the faculties vested in him for that purpose by his Government.

ARTICLE XI.

In testimony of the good and cordial understanding which is established between the Republics of Nicaragua and Costa Rica, they mutually give up all claims against each other, on whatever ground they may be founded, up to the date of the present treaty; and in the same way the two contracting parties do hereby waive all claims for indemnification of damages which they might consider themselves entitled to present against each other.

ARTICLE XII.

This treaty shall be ratified, and the ratifications thereof shall be exchanged, at Santiago de Managua within forty days after it is signed.

In testimony whereof we have hereunto subscribed our names to the present instrument, executed in triplicate, together with the Hon. Minister of Salvador, and under the countersign of the respective secretaries of Legation, at the city of San José, in Costa Rica, on the 15th day of April, in the year of our Lord 1858.

MAXIMO JEREZ.
JOSÉ M. CAÑAS.
PEDRO RÓMULO NEGRETE.
MANUEL RIVAS,
Secretary of the Legation of Nicaragua.
SALVADOR GONZALEZ,
Secretary of the Legation of Costa Rica.
FLORENTINO SOUZA,
Secretary of the Legation of Salvador.

ADDITIONAL ACT.

The undersigned, Ministers of Nicaragua and Costa Rica, wishing to give public testimony of their high esteem and of their feelings of gratitude towards the Republic of Salvador, and the worthy representative of the same, Col. Don Pedro R. Negrete, have agreed that the treaty of territorial limits be accompanied with the following declaration, namely:

"Whereas, the Government of Salvador has given to the Governments of Costa Rica and Nicaragua the most authentic testimony of its noble feelings, and of its high appreciation of the value and necessity of cultivating fraternal sympathy among these Republics, and has interested itself as efficiently as friendly in the equitable settlement of the differences which unhappily have existed between the high contracting parties, a settlement which has been secured by the two Legations, owing in great part to the estimable and efficient action of the Hon. Señor Negrete, Minister Plenipotentiary of the said Government, who proved to be the right person to accomplish the generous mediation for which he was appointed, and who has known perfectly well how to meet the intentions of his Government, and owing also to the important aid, to the learning and to the impartial suggestions of the same Minister during the discussion of the subject, we, the Representatives of Costa Rica and Nicaragua, in the name of our respective countries, do hereby fulfil the pleasant duty of declaring and recording here all the gratitude which we feel for the patriotism, high mindedness, fraternity, and benevolence characterizing the Government of Salvador.

In testimony whereof we have hereunto subscribed our names and signed this, in triplicate, in the presence of the Hon. Minister of Salvador, under the countersign of the respective Secretaries of Legation, in the city of San José, the capital of Costa Rica, on the 15th day of April, in the year of our Lord 1858.

MÁXIMO JEREZ.
JOSÉ M. CANAS.
MANUEL RIVAS,
Secretary of the Legation of Nicaragua.
SALVADOR GONZALEZ,
Secretary of the Legation of Costa Rica.

Secretary of State.
OCT 27 1887

THE CASE

OF THE

REPUBLIC OF NICARAGUA

SUBMITTED TO HIS EXCELLENCY

HON. GROVER CLEVELAND,

President of the United States,

ARBITRATOR,

UNDER THE TREATY OF GUATEMALA OF
DECEMBER 24th, 1886.

WASHINGTON, D. C.
1887.

at Managua or San José de Costa Rica on the 30th of June next, or sooner if possible.

In testimony of which, the plenipotentiaries and the minister of foreign affairs of Gautemala have signed and sealed with their private seals, in the city of Guatemala, this 24th day of December, 1886.

J. ANTONIO ROMAN.
ASCENSION ESQUIVEL.
FERNANDO CRUZ.

APPENDIX "B."

Boundary Treaty of 1858 between Costa Rica and Nicaragua.

SAN JOSÉ, *April 15, 1858.*

I, Maximo Jerez, minister plenipotentiary of the Government of the Republic of Nicaragua, and I, José Maria Cañas, minister plenipotentiary of the Government of the Republic of Costa Rica, commissioned by our constituents to form a boundary treaty for both Republics, which may put an end to the differences which have retarded the better and more perfect understanding and harmony which should prevail between them, for their common security and aggrandizement; having exchanged our respective powers, after the examination made of them by the honorable Señor Don Pedro R. Negrete, minister plenipotentiary of the Government of the Republic of Salvador, in the exercise of his powers as brotherly mediator in these negotiations, who found them good and in due form; as in like manner were found by us those exhibited by the said minister; having discussed the respective points with due deliberation, with the aid and assistance of the representative of Salvador, we have agreed upon and drawn up the following:

Boundary Treaty between Nicaragua and Costa Rica.

ARTICLE I.

The Republic of Nicaragua and the Republic of Costa Rica declare in the most decided and solemn terms that if for a moment they were about to prepare to fight each other on account of boundary controversies and for reasons which each one of the high contracting parties considered lawful and honorable, they now, after repeated proofs of good understanding, pacific principles, and true confraternity, desire and formally pledge themselves to endeavor that peace, happily re-established, may each year be more and more consolidated between the two Governments and between the two nations, not only for the benefit and welfare of Nicaragua and Costa Rica, but for the happiness and prosperity which in a certain sense redound to the advantage of the other, our sister Republics of Central America.

ARTICLE II.

The dividing line between the two Republics, beginning at the North Sea (Caribbean Sea,) shall start at the extremity of Punta de Castilla, at the mouth of river San Juan de Nicaragua, and shall run along its right bank to a point 3 English miles distant from Castillo Viejo, measured from the outside fortifications of said Castillo down to that point. Thence in a curve of 3 English miles distance, whereof the fortifications form the center to a point above Castillo 2 miles distant from the river's bank; thence following towards the river Sapoa that flows into Lake Nicaragua, running a line always 2 miles distant from the right bank of river San Juan with its windings to its origin from the lake and from the right bank of the lake to said river Sapoa, striking it parallel with the lake shore. From that point where river Sapoa is met, distant as aforesaid 2 miles from the lake, a straight astronomical line shall be drawn to the central point of Salinas Bay on the South Sea (Pacific Ocean), where the demarkation of the territories of the two contracting Republics shall end.

ARTICLE III.

Measurements corresponding to this dividing line shall be made, in whole or in part, by commissioners of the two Governments, these being agreed for fixing the time necessary for the operation. The said commissioners shall have the power to deviate somewhat from the curve around Castillo; from the line parallel with the shores of the river and the lake, or from the straight astronomical line between Sapoa and Salinas, in case that they can agree upon this, in order to find natural landmarks.

ARTICLE IV.

The Bay of San Juan del Norte, as well as that of Salinas, shall be common to both Republics, and consequently so shall be their advantages and the obligation to unite in their defense. Costa Rica shall likewise be bound for the portion belonging to her on the shores of the river San Juan on the same terms that Nicaragua is by treaties to unite in guarding it, in the same manner that the two Republics shall unite in its defense in case of attack from without, and they shall do so with all the efficacy in their power.

ARTICLE V.

During the time that Nicaragua may not recover full possession of all her rights in the port of San Juan del Norte, the Punta de Castilla shall be used and possessed entirely in common by Nicaragua and Costa Rica alike, the whole passage of the Colorado River being designated as its boundary, so long as this community of use and possession lasts. It is further agreed that so long as the said port of San Juan may exist classified as *free*, Costa Rica shall not collect from Nicaragua port dues at Punta de Castilla.

ARTICLE VI.

The Republic of Nicaragua shall have exclusive dominion and supreme control of the waters of the river San Juan from its outlet from the lake until it empties into the Atlantic; but the Republic of Costa Rica shall have perpetual rights, in the said waters, of free navigation from the river's mouth to three English miles below Castillo Viejo for the purposes of commerce, whether with Nicaragua or the interior of Costa Rica, by way of the rivers San Cárlos or Sarapiqui or any other route proceeding from the tract on the shores of San Juan that may be established as belonging to this Republic. The vessels of both countries may indiscriminately approach the shores (atracar) of the river where the navigation is common to both, without the collection of any class of impost unless so established by the two Governments.

ARTICLE VII.

It is agreed that the territorial division made by this treaty shall in no wise be understood as counteracting obligations subscribed to, whether under political treaties or under contracts for a canal (*canalizacion*) or transit made on the part of Nicaragua before this present agreement; it shall rather be understood that Costa Rica assumes those obligations in the tract (*parte*) belonging to her territory without in any way interfering with the eminent domain and sovereign rights held by her over the same.

ARTICLE VIII.

If the contracts for a canal or for transit made before Nicaragua's knowledge of this agreement should become incapable of duration through whatever cause, Nicaragua binds herself not to conclude any other for the said objects without first having the opinion of the Government of Costa Rica in regard to the disadvantages that the negotiation might possess for the two countries, provided that this opinion be delivered within thirty days after the reception of the proposal. In case Nicaragua should state the proposition to be urgent and the natural rights of Costa Rica not to be injured by the negotiations, this advice shall be consultative (*este voto será consultivo*).

ARTICLE IX.

For no purpose, nor in the event of actual war, in which the two Republics of Nicaragua and Costa Rica should unhappily find themselves, shall they be permitted to practice any act of hostility towards each other in the port of San Juan del Norte, nor on the river of that name nor the Lake of Nicaragua.

ARTICLE X.

The stipulation in the foregoing article being essentially important for the protection of the port and river against foreign aggressions, which would affect the general interests of both countries, its strict fulfillment is agreed to under the special guarantee, which, in the name of the mediating Government, its minister plenipotentiary here is directed to give, and in effect does give, by virtue of the powers which for this purpose he states have been conferred on him by his Government.

ARTICLE XI.

In testimony of the good and cordial understanding which is established between the Republics of Nicaragua and Costa Rica, they renounce all assets (*crédito activo*) that may exist between them, under whatever title, until the signing of the present treaty, and the high contracting parties likewise cancel all claims for indemnity to which they may consider themselves entitled.

ARTICLE XII.

This treaty shall be ratified and its ratifications exchanged within forty days after it is signed at Santiago de Managua.

In testimony whereof we sign this in triplicate, together with the honorable minister from Salvador, the respective secretaries countersigning, in the city of San José, the capital of Costa Rica, on the fifteenth day of April, eighteen hundred and fifty-eight.

MÁXIMO JEREZ.
JOSÉ M. CAÑAS.
PEDRO RÓMULO NEGRETE.

Secretary of the legation of Nicaragua,
MANUEL RIVAS.
Secretary of the legation of Costa Rica,
SALVADOR GONZALES.
Secretary of the legation of Salvador,
FLORENTIN SOUZA.

Additional Act.

The undersigned, ministers of Nicaragua and Costa Rica, desiring to give public testimony to their high esteem and their grateful sentiments for the Republic of Salvador and for its worthy representative, Señor Colonel Don Pedro R. Negrete, agree to annex to the treaty of territorial boundaries the following formal declaration:

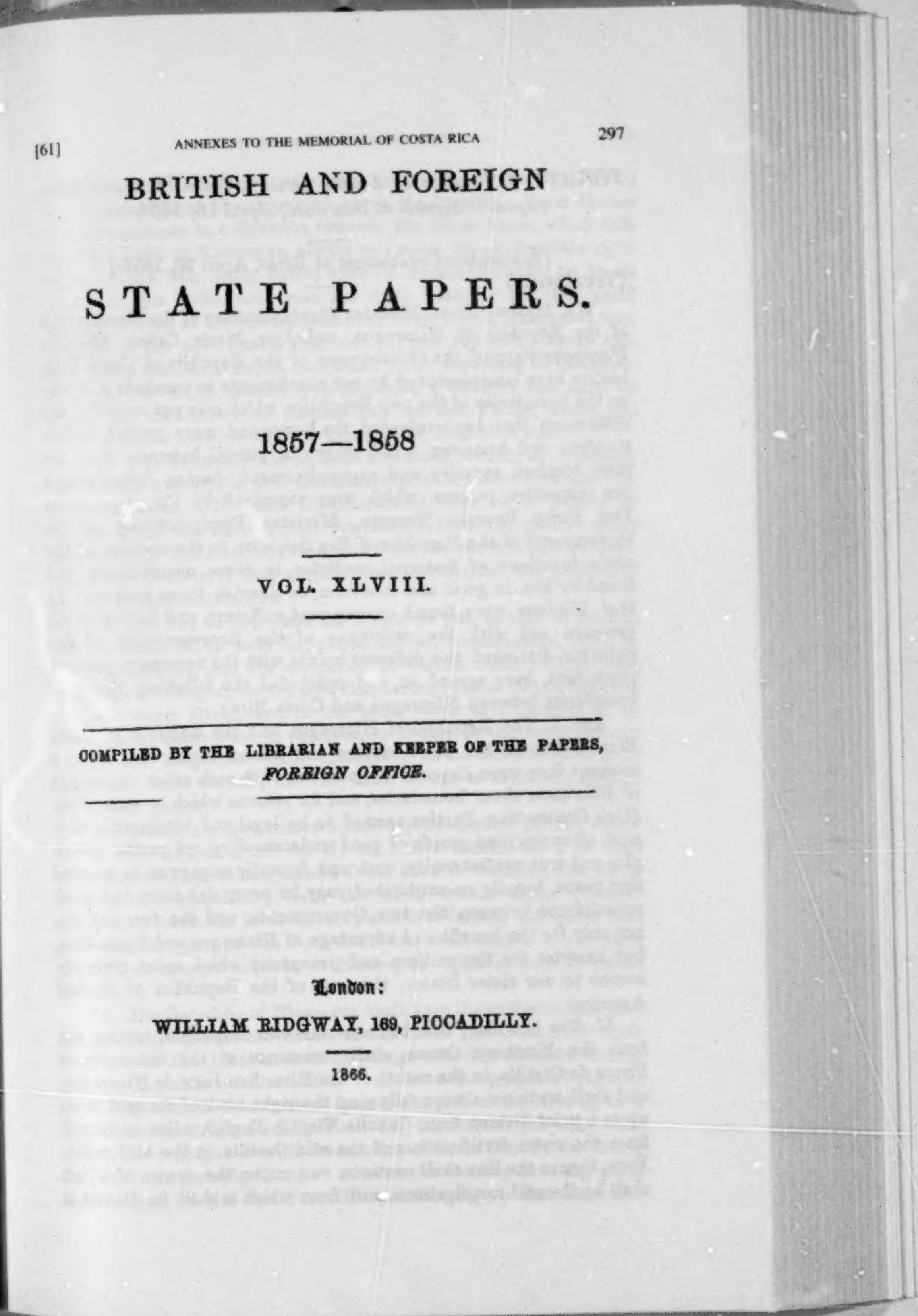
The Government of Salvador having given to that of Costa Rica and that of Nicaragua the most authentic testimony of its noble sentiments and of its knowledge how fully to appreciate and to cultivate the fraternal sympathy which is shared by all these Republics, interesting itself so efficiently and amicably in the equitable adjustment of the differences which unfortunately have existed between the high contracting parties, and obtained this happy result through the legations of both, due in great measure to the estimable and active offices with which the honorable Señor Negrete, minister plenipotentiary of that Government, designated with the greatest fitness for using his generous mediation, has known perfectly how to meet its intentions, and due also to the important intelligence and impartial views of the said señor *ministro* in the discussion of the matters concerning the proper settlement: We, the chargés of the legations of Costa Rica and Nicaragua, in the name of our respective constituents, fulfill the pleasing duty of hereby declaring and subscribing to all the gratitude so justly merited by the patriotic zeal, enlightenment, fraternity, and benevolence which characterize the Government of Salvador.

In testimony whereof we sign these presents in triplicate, in the presence of the honorable minister from Salvador, the respective ministers countersigning, in the city of San José, the capital of Costa Rica, on the fifteenth day of the month of April, in the year of our Lord eighteen hundred and fifty-eight.

Máximo Jerez.
José M. Cañas.

The Secretary of legation of Nicaragua,
Manuel Rivas.

The Secretary of legation at Costa Rica,
Salvador Gonzales.



BRITISH AND FOREIGN

STATE PAPERS.

1857—1858

VOL. XLVIII.

COMPILED BY THE LIBRARIAN AND KEEPER OF THE PAPERS,
FOREIGN OFFICE.

London:
WILLIAM RIDGWAY, 169, PICCADILLY.

1866.

TREATY of Territorial Limits between Costa Rica and Nicaragua.—Signed at San José, April 15, 1858.

[Ratifications exchanged at Rivas, April 26, 1858.]

(Translation.)

We, Maximo Jerez, Minister Plenipotentiary of the Government of the Republic of Nicaragua, and Jose Maria Cañas, Minister Plenipotentiary of the Government of the Republic of Costa Rica, having been commissioned by our constituents to conclude a Treaty on the boundaries of the two Republics, which may put an end to the differences that have retarded the better and more perfect understanding and harmony which ought to prevail between them for their common security and aggrandizement, having interchanged our respective powers, which were examined by the Honourable Don Pedro Romulo Negrete, Minister Plenipotentiary of the Government of the Republic of San Salvador, in the exercise of the noble functions of fraternal mediator in these negotiations, and found by him in good and due form, as likewise those produced by that Minister were found on our part sufficient, and having in the presence and with the assistance of the Representative of San Salvador, discussed the different points with the necessary care and precaution, have agreed on, and concluded the following Treaty of boundaries between Nicaragua and Costa Rica:

Art. I. The Republic of Nicaragua and the Republic of Costa Rica declare in the most express and solemn terms, that if for a moment they were disposed to go to war with each other on account of differences about boundaries, and for reasons which to each of the High Contracting Parties seemed to be legal and honourable, they now, after repeated proofs of good understanding, of pacific principles and true confraternity, wish and formally engage so to proceed that peace, happily re-established, may be every day more and more consolidated between the two Governments, and the two nations, not only for the benefit and advantage of Nicaragua and Costa Rica, but likewise for the welfare and prosperity which must certainly accrue to our sister States, the rest of the Republics of Central America.

II. The boundary line between the two Republics, setting out from the Northern Ocean, shall commence at the extremity of Punta de Castilla, in the mouth of the River San Juan de Nicaragua, and shall continue, always following the right bank of the said river, up to a point distant from Castilla Viejo 3 English miles, measured from the outer fortifications of the said Castilla to the said point. From thence the line shall continue in a curve, the centre of which shall be the said fortifications, and from which it shall be distant 3

English miles throughout its course, until it arrives at a point two miles distant from the river bank above the Castilla. From thence it shall continue in a direction towards the River Sapoa, which falls into the Lake of Nicaragua, always two miles distant from the right bank of the San Juan River, with its circumvolutions, up to its origin at the Lake, and from the right banks of the lake itself, until it arrives at the above-mentioned River Sapoa, where this line, parallel to the said banks, shall end. From the point where this line meets the River Sapoa, and which must, according to the aforesaid, be two miles distant from the lake, a straight line shall be drawn to the centre of Salinas Bay on the Pacific, where the boundary-line between the two Contracting Republics ends.

III. This boundary line shall be measured entirely or in part by Commissioners of the two Governments, at a time which shall be fixed by them. The said Commissioners shall be at liberty to deviate from the curve round the Castilla, from the parallel along the shores of the river and lake, and from the straight line between Sapoa and Salinas, if they should agree thereon, for the purpose of finding natural landmarks.

IV. The Bay of San Juan del Norte as well as that of Salinas shall be common to both Republics, and so, consequently, shall be their advantages, and the obligation to defend them. Costa Rica shall also be obliged, for the part that belongs to her of the banks of the San Juan River, and in the same terms as Nicaragua is by Treaties, to contribute to the security thereof in the same manner as the two Republics shall contribute to its defence in case of aggression from abroad; and they shall do this as effectively as shall be in their power.

V. Until Nicaragua recovers entire possession of all her rights in the Port of San Juan del Norte, Punta Castilla shall be used and possessed by Nicaragua and Costa Rica in common, and for so long as this community lasts, the whole course of the Colorado River shall mark the limit thereof; and it is further stipulated that while the said port of San Juan del Norte shall remain a free port, Costa Rica cannot concede to Nicaragua rights of port at Punta Castilla.

VI. The Republic of Nicaragua shall have the exclusive dominion and sovereignty over the waters of the River San Juan from their issue out of the lake to their discharge into the Atlantic Ocean. But the Republic of Costa Rica shall have the perpetual right of free navigation in these waters from the mouth of the river up to 3 English miles below Castilla Viejo, for commercial purposes, whether with Nicaragua or with the interior of Costa Rica by the Rivers San Carlos or Sarapiqui, or any other route starting from any point on the bank of the San Juan River belonging to that Republic

The boats of either country may touch at any part of the banks of the river where the navigation is common, without paying any dues except such as may be established by agreement between the two Governments.

VII. It is agreed that the territorial division made by this Treaty, is in no wise to be understood as contrary to the obligations incurred either by political Treaties or contracts of canalization or transit entered into by Nicaragua before the recognition of the present Convention; it is understood rather that Costa Rica assumes those obligations, in the part which belongs to her territory, without any prejudice to her sovereign rights and dominion over the same.

VIII. If the contracts of canalization or transit entered into before the Government of Nicaragua was informed of this Convention, should for any reason remain without effect, Nicaragua engages not to conclude any other contract on those subjects without first hearing the opinion of the Government of Costa Rica concerning the inconveniences it might occasion to both countries, provided that opinion be given within 30 days after the receipt of the report. If the Government of Nicaragua declares that the decision is urgent, and the natural rights of Costa Rica are not impaired, this vote shall be consultative.

IX. On no account whatever, not even in case of war, if it should unfortunately occur between the Republics of Nicaragua and Costa Rica, shall any act of hostility be allowed between them in the port of San Juan del Norte, nor on the river of that name, nor on Lake Nicaragua.

X. The stipulation in the foregoing Article being essentially important for the safety of the port and river against external aggression, which might affect the general interests of the country, its strict observance is under the special guarantee which the mediating Government is disposed to give, and which its Minister Plenipotentiary here present actually gives in virtue of the powers which he declares to have been conferred upon him by his Government for the purpose.

XI. In testimony of the good and cordial understanding which is established between the Republics of Nicaragua and Costa Rica, they renounce any debts that may exist between them however they may have arisen, up to the signing of this Treaty, and the High Contracting Parties likewise give up all claims for indemnification to which they may consider themselves entitled.

XII. This Treaty shall be ratified and its ratifications interchanged within 40 days from its signature, at Santiago de Managua.

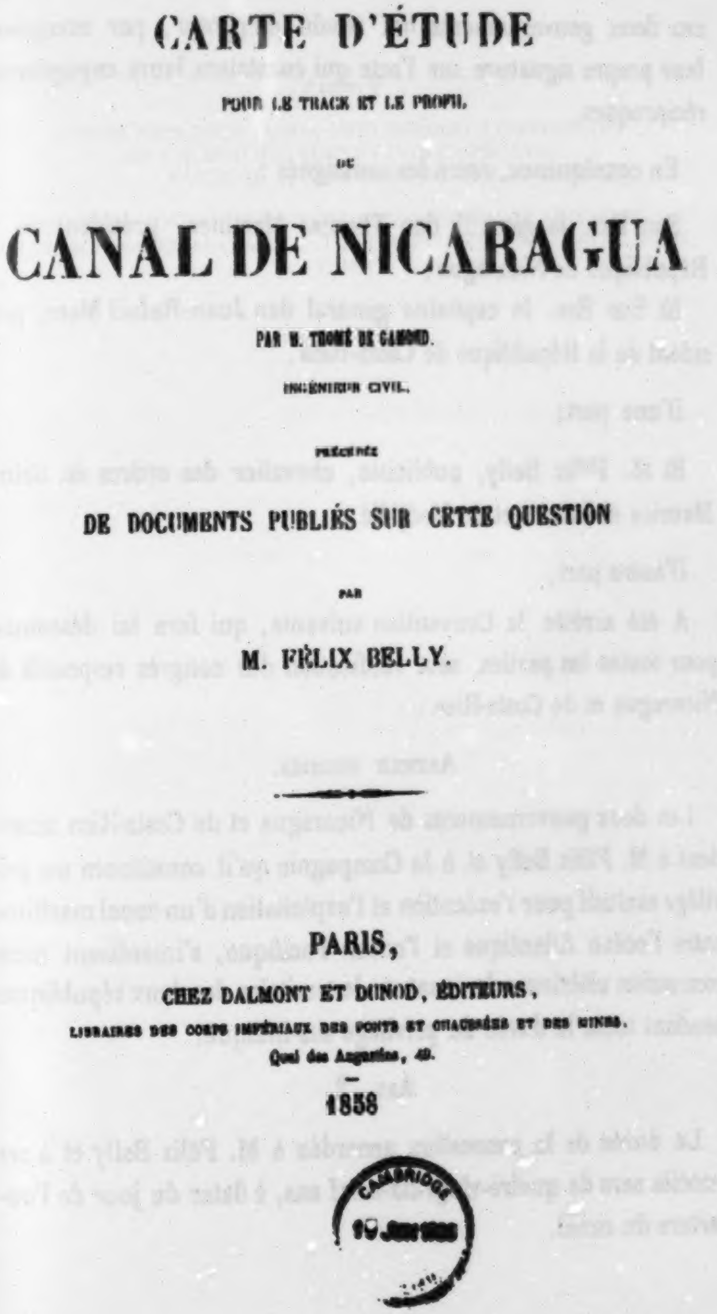
In witness whereof, we sign this present in triplicate, together with the honourable Minister of Salvador, the respective Secretaries countersigning it, in the city of San José, capital of Costa Rica, on the 15th of April, in the year of our Lord 1858.

MAXIMO JEREZ.
JOSE MARIA CANAS.
PEDRO ROMULO NEGRETE.

Annex 8

NICARAGUA-COSTA RICA-F. BELLY, CONVENTION RELATIVE TO THE CONCESSION FOR AN INTEROCEANIC CANAL BY THE RIVER SAN JUAN AND THE LAKE OF NICARAGUA, RIVAS, 1 MAY 1858, ARTICLE 1

SOURCE : M. FÉLIX BELLY, *CARTE D'ÉTUDE POUR LE TRACÉ ET LE PROFIL DU CANAL DE NICARAGUA*
(PARIS : CHEZ DALMONT ET DUNOD, 1858), DOCUMENT II, P. 20



CARTE D'ÉTUDE

POUR LE TRACÉ ET LE PROFIL

DU

CANAL DE NICARAGUA

PAR M. THOMÉ DE GAMOND,

INGÉNIEUR CIVIL.

PRÉCÉDÉE

DE DOCUMENTS PUBLIÉS SUR CETTE QUESTION

PAR

M. FÉLIX BELLY.

PARIS,
CHEZ DALMONT ET DUNOD, ÉDITEURS,
LIBRAIRES DES CORPS IMPÉRIAUX DES PONTS ET CHAUSSÉES ET DES MINES.
Quai des Augustins, 49.

1858

CAMBRIDGE

ces deux gouvernements ont résolu d'apposer, par exception, leur propre signature sur l'acte qui constatera leurs engagements réciproques.

En conséquence, entre les soussignés :

Son Exc. le général don Thomas Martinez, président de la République de Nicaragua,

Et Son Exc. le capitaine général don Juan-Rafaël Mora, président de la République de Costa-Rica,

D'une part;

Et M. Félix Belly, publiciste, chevalier des ordres de Saint-Maurice et Lazare et du Medjidié,

D'autre part,

A été arrêtée la Convention suivante, qui fera loi désormais pour toutes les parties, sauf ratification des congrès respectifs de Nicaragua et de Costa-Rica :

Article premier.

Les deux gouvernements de Nicaragua et de Costa-Rica accordent à M. Félix Belly et à la Compagnie qu'il constituera un privilége exclusif pour l'exécution et l'exploitation d'un canal maritime entre l'océan Atlantique et l'océan Pacifique, s'interdisant toute concession ultérieure de canal sur le territoire des deux républiques pendant toute la durée du privilége sus-indiqué.

Art. 2.

La durée de la concession accordée à M. Félix Belly et à ses associés sera de quatre-vingt-dix-neuf ans, à dater du jour de l'ouverture du canal.

Annex 9

COSTA RICA-NICARAGUA, PRELIMINARY CONVENTION ON A SCIENTIFIC SURVEY (VOLIO-ZELAYA), SAN JOSÉ, 13 JULY 1868, ARTICLE 1

SOURCE : JOSÉ MARÍA BONILLA, *COLECCIÓN DE TRATADOS INTERNACIONALES* (MANAGUA : TIPOGRAFÍA INTERNACIONAL, 1909), P. 366

TRANSLATION

Costa Rica-Nicaragua, Preliminary Convention on a Scientific Survey (Volio-Zelaya), San José, 13 July 1868

The Government of the Republic of Costa Rica and the Government of the Republic of Nicaragua, equally interested and wishing to unite their efforts to improve one of the Atlantic ports, the one in San Juan del Norte, or the one on the mouth of the Colorado, even if this leaves the other in a disadvantaged position, under the notion that any of them by itself is found insufficient to satisfy the needs of trade; and wanting to establish the preliminary basis for an agreement towards such an important objective, have granted full power as it follows:

The President of the Republic of Costa Rica to Julián Volio, Secretary of State at the Foreign Relations Office of the Republic of Costa Rica and

The President of the Republic of Nicaragua to José María Zelaya, Extraordinary Envoy and Plenipotentiary Minister of Nicaragua in Costa Rica.

Who, after having exchanged their respective full powers and having found them dutifully correct, have agreed the following:

Preliminary Convention

Article 1

A scientific analysis of the Colorado and San Juan rivers shall be performed, by means of a Commission composed by people appointed, one by the Government of Costa Rica and another by the Government of Nicaragua, for the purpose of examining which of the two ports would be easier to improve, by making the totality or part of the waters from both rivers, which diverge at the San Juan highland, follow a single course.

CONVENCION

ENTRE

Nicaragua y Costa Rica,

PARA MEJORAR UNO DE LOS RIOS "COLORADO" O "SAN JUAN"

* * *

ZELAYA — VOLIO

1868

EL Gobierno de la República de Costa Rica y el Gobierno de la República de Nicaragua, igualmente interesados, y deseosos de unir sus esfuerzos para mejorar uno de los puertos del Atlántico, el de San Juan del Norte ó el de la Boca del Colorado, aunque sea el uno con detrimento del otro, supuesto que cualquiera de ellos por sí sólo se juzga deficiente para satisfacer á las necesidades del comercio; y queriendo fundar los preliminares de un arreglo con tan importante objeto, han conferido sus plenos poderes, á saber:

El Presidente de la República de Costa Rica, á Julián Volio, Secretario de Estado en el Despacho de Relaciones Exteriores de la República de Costa Rica y

El Presidente de la República de Nicaragua, á José María Zelaya, Enviado Extraordinario y Ministro Plenipotenciario de Nicaragua en Costa Rica.

Quienes, después de canjear sus respectivos Plenos Poderes, y de encontrarlos en buena y debida forma, han arreglado la siguiente

CONVENCION PRELIMINAR.

Artículo 1º

Se practicará un reconocimiento científico del río Colorado y del San Juan, por medio de una comisión compuesta de personas nombradas, una por el Gobierno de Costa Rica y otra por el Gobierno de Nicaragua, con el objeto de examinar cuál de los dos puertos sería más fácil mejorar, haciendo que el todo ó parte de las aguas de los dos ríos en que se divide el Alto San Juan, tome un solo cauce.

Annex 10

COSTA RICA-NICARAGUA, TREATY OF COMMERCE (VOLIO-ZELAYA), SAN JOSÉ, 14 AUGUST 1868, ARTICLES 1, 2

SOURCE : JOSÉ MARÍA BONILLA,
COLECCIÓN DE TRATADOS INTERNACIONALES
(MANAGUA : TIPOGRAFÍA INTERNACIONAL, 1909), PP. 386-387

TRANSLATION

Costa Rica-Nicaragua, Treaty of Commerce (Volio-Zelaya), San José, 14 August 1868

The Governments of the Republics of Costa Rica and Nicaragua, deeming it convenient for the impulse of their mutual interests to destroy the obstacles that impede the widening and progress of the trade of both nations, and being convinced that a commercial treaty that assures reciprocal advantages is the way to tighten and to make even more intimate the fraternal relations between both peoples, have with this objective granted full powers as it follows:

The President of the Republic of Nicaragua to José María Zelaya, Extraordinary Envoy and Plenipotentiary Minister of Nicaragua in Costa Rica and

The President of the Republic of Costa Rica to Julián Volio, Secretary of State at the Foreign Relations Office of the Republic of Costa Rica.

Who, after having exchanged their respective full powers, and having found them dutifully correct, have agreed the following articles:

Article 1

There shall be between the Republics of Costa Rica and Nicaragua a reciprocal freedom of trade in all the goods that are not prohibited by their respective laws. As a consequence, the citizens of any of the two parties may travel freely and safely by sea or by land with their ships and cargo, and enter through the ports, rivers and territories habilitated by the other party; the same as the nationals, they shall be able to do commerce, retail or wholesale, rent and occupy houses and warehouses, fix prices on their merchandise, doing this business by themselves or through consignataries, agents, or envoys that may be appointed to this effect; however, remaining subjects to the laws of the places where they travel performing these actions. –

Article 2

As the Republics of Costa Rica and Nicaragua cannot be strictly considered foreign nations, due to their common origin, their territorial, commercial and political ties and interests which have bound them, it is therefore declared and established, regarding their particular and own products: that the imports and exports that are made from one point to the other, either by sea or land, of the goods or natural or industrial products natural to the sender's country shall not pay rights or taxes of any kind.-

Unique.- To avoid any doubt as well as any fraud, it is agreed: that the items considered in this Article, when they enter the dominion or territory of one of the parties, shall be accompanied by a guide prepared by the competent authorities from the sender's party, in which it shall be certified the origin of the goods, this in regard to imports; nevertheless, in regard to exports, the party that verifies them shall have the obligation of submitting the corresponding guide within two months if that is required.

TRATADO

—DE—

COMERCIO

ENTRE

NICARAGUA Y COSTA RICA

ZELAYA = VOLIO

1868

" Creyendo conveniente los Gobiernos de las Repúblicas de Nicaragua y Costa Rica, para el fomento de sus mútuos intereses, destruír los obstáculos que impiden el ensancho y progreso del comercio de ambas Naciones ; y convencidos de que un Tratado mercantil, que asegure ventajas recíprocas, es el medio de hacer más estrechas é íntimas las relaciones fraternales entre ambos pueblos, han conferido con este objeto sus Plenos Poderes, á saber :

El Presidente de la República de Nicaragua, á José María Zelaya, Enviado Extraordinario y Ministro Plenipotenciario de Nicaragua en Costa Rica; y

El Presidente de Costa Rica, á Julián Volio, Secretario de Estado en el Despacho de Relaciones Exteriores de la República de Costa Rica.

Quienes después de canjear sus respectivos Plenos Poderes, y de encontrarlos en buena y debida forma, han convenido en los artículos siguientes :

Artículo I.

Habrá entre las Repúblicas de Nicaragua y Costa Rica una recíproca libertad de comercio, en todos los artículos no prohibidos por sus respectivas leyes. En consecuencia, los ciudadanos de cualquiera de las dos partes, podrán ir por mar y por tierra, libre y seguramente con sus buques y cargamentos, y entrar en los puertos, ríos y territorios habilitados de la otra ; y lo mismo que los naturales, podrán hacer el comercio, por mayor ó por menor, alquilar y ocupar casas y almacenes, fijar los precios á sus mercaderías, haciendo por sí todos estos negocios, ó por medio de consignatarios, agentes ó encargados, que al efecto podrán nombrar ; quedando, sin embargo, respectivamente, sujetos á las leyes y estatutos del lugar en donde pasaren estos actos.

Artículo II.

No pudiendo considerarse rigurosamente las Repúblicas de Nicaragua y Costa Rica, como Naciones extranjeras, por razón de su común origen, por las conexiones é intereses territoriales, comerciales y políticos que las han ligado, se declara y establece, respecto de sus particulares y propias producciones; que las importaciones y exportaciones que se hagan de uno á otro punto, ya sea por mar ó por tierra, de los artículos ó productos naturales ó industriales, propios del país que los remite, no pagarán derechos ni impuesto de ninguna clase.

§ Unico—Para evitar toda duda, lo mismo que cualquier fraude, se conviene: que los efectos de que habla este artículo, en su introducción al territorio ó dominios de la una parte, deberán ir acompañados de una guía, expedida por las autoridades competentes de la otra, en que se hará constar, ser de ella el origen y procedencia de dichos efectos, esto por lo que hace á la importación; mas respecto de la exportación, el que la verifique tiene la obligación de presentar dentro de dos meses la correspondiente tornaguía, si ésta se le exigiere.

Artículo III.

Respecto al comercio y artículos extranjeros, ya sea en su importación ó en su exportación, por mar ó por tierra, los ciudadanos de las dos partes contratantes, no estarán sujetos, ni pagarán otros ni más altos derechos que los que correspondan pagar á los naturales; guardándose la misma regla en lo relativo á los otros impuestos que cada país tenga establecidos, según sus leyes, á que deberán sujetarse los ciudadanos del otro, respectivamente.

Artículo IV.

Se establece por punto general, que los nicaragüenses en Costa Rica y los costarricenses en Nicaragua, recíprocamente, serán considerados y tratados, por lo que hace al comercio extranjero, por mar ó por tierra, en cuanto á derechos y cualquiera clase de impuestos, como asimismo respecto á gracias, excenciones y privilegios, como la Nación más favorecida; de manera que no podrá ser concedido ningún favor á otra Nación por alguna de las partes contratantes, sin que se entienda, desde luego, común para la otra en el concepto, sin embargo, de que gozarán de aquel favor libremente, si la concesión fuese libre ó prestando la misma compensación, si la concesión fuese condicional.

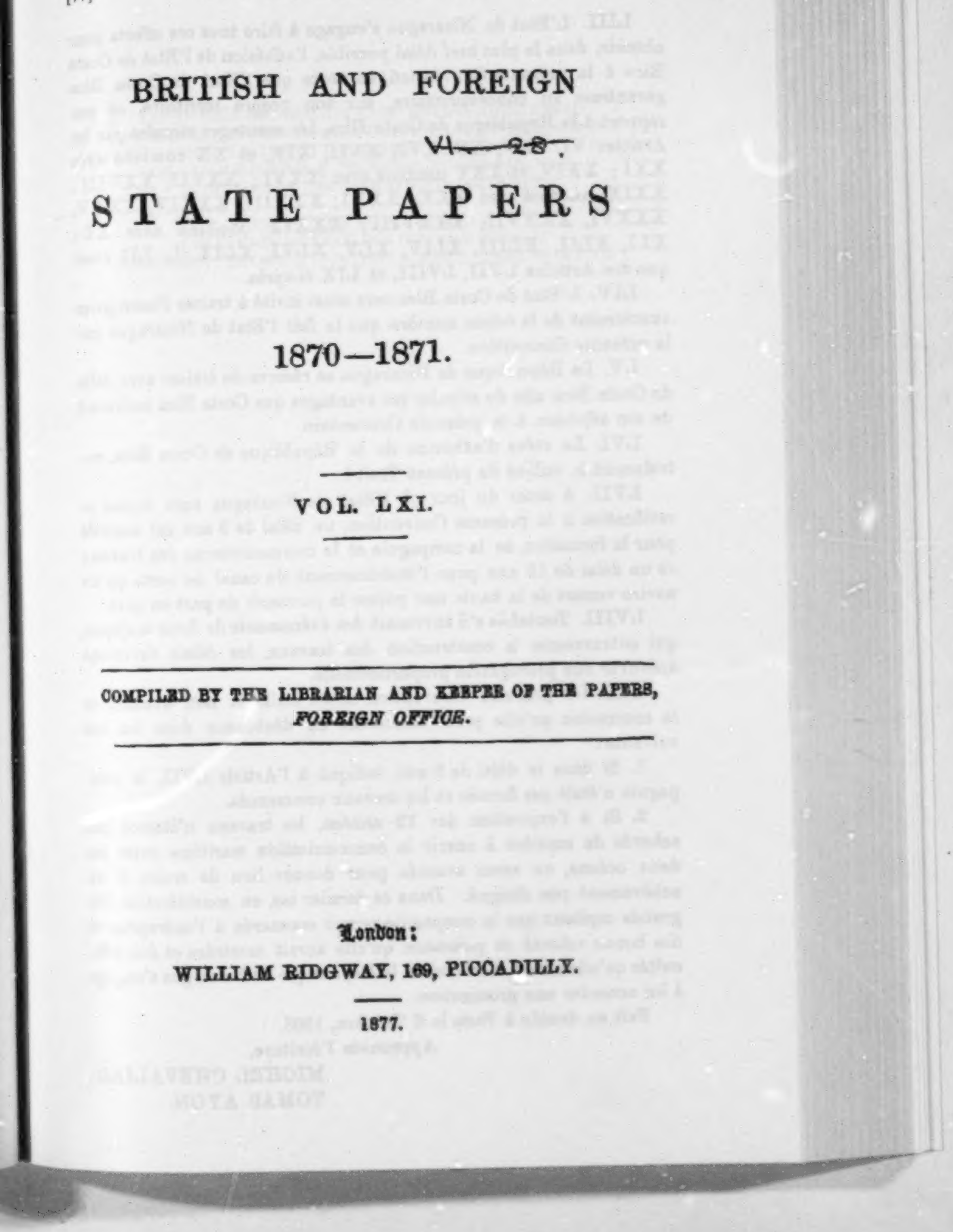
Artículo V.

El presente Tratado permanecerá en su fuerza y vigor por el término de diez años, contados desde el día del canje de las ratificaciones. Sin embargo, si un año antes de espi-

Annex 11

REPUBLIC OF NICARAGUA-M. CHEVALIER, CONTRACT FOR THE EXCAVATION OF AN INTEROCEANIC CANAL ACROSS CENTRAL AMERICA (AYON-CHEVALIER), PARIS, 6 OCTOBER 1868, ARTICLES 53-56

SOURCE : 61 *BFSP* 1275 (FRENCH)



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VOL. LXI.

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FOREIGN OFFICE.

London:
WILLIAM RIDGWAY, 169, PICCADILLY.

1877.

LIII. L'Etat de Nicaragua s'engage à faire tous ses efforts pour obtenir, dans le plus bref délai possible, l'adhésion de l'Etat de Costa Rica à la présente Convention, en sorte que l'Etat de Costa Rica garantisse au concessionnaire, sur son propre territoire, et par rapport à la Republique de Costa Rica, les avantages stipulés par les Articles VI, XIV, XV, XVI, XVII, XIX, et XX combiné avec XXI; XXIV, et XXV combiné avec XXVI; XXVII, XXVIII; XXIX combiné avec XXX, XXXI, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII; XXXIX combiné avec XL; XLI, XLII, XLIII, XLIV, XLV, XLVI, XLIX, L, LII ainsi que des Articles LVII, LVIII, et LIX ci-après.

LIV. L'Etat de Costa Rica sera ainsi invité à traiter l'entreprise exactement de la même manière que le fait l'Etat de Nicaragua par la présente Convention.

LV. La République de Nicaragua se réserve de traiter avec celle de Costa Rica afin de stipuler les avantages que Costa Rica retirerait de son adhésion à la présente Convention.

LVI. Le refus d'adhésion de la République de Costa Rica, entraînerait la nullité du présent Traité.

LVII. A dater du jour où l'Etat de Nicaragua aura donné sa ratification à la présente Convention, un délai de 3 ans est accordé pour la formation de la compagnie et le commencement des travaux et un délai de 12 ans pour l'établissement du canal de sorte qu'un navire venant de la haute mer puisse le parcourir de part en part.

LVIII. Toutefois s'il survenait des événements de force majeure, qui entravassent la construction des travaux, les délais devraient éprouver une prorogation proportionnelle.

LIX. La présente Convention serait nulle et non avenue, et la concession qu'elle porte tomberait en déchéance dans les cas suivants:

1. Si dans le délai de 3 ans, indiqué à l'Article LVII, la compagnie n'était pas formée et les travaux commencés.

2. Si à l'expiration des 12 années, les travaux n'étaient pas achevés de manière à ouvrir la communication maritime entre les deux océans, ou assez avancés pour donner lieu de croire à un achèvement peu éloigné. Dans ce dernier cas, en considération des grands capitaux que la compagnie aurait consacrés à l'entreprise et des bonne volonté et puissance qu'elle aurait montrées et des difficultés qu'elle aurait rencontrées, la République de Nicaragua s'engage à lui accorder une prorogation.

Fait en double à Paris le 6 Octobre, 1868.

Approuvés l'écriture,

MICHEL CHEVALIER.
TOMAS AYON.

Annex 12

COSTA RICA-NICARAGUA, CONVENTION ADDITIONAL TO THE PRELIMINARY CONVENTION ON A SCIENTIFIC SURVEY OF 13 JULY 1868 RELATIVE TO THE IMPROVEMENT OF THE COLORADO OR SAN JUAN RIVERS (ESQUIVEL-RIVAS), SAN JOSÉ, 21 DECEMBER 1868 (UNRATIFIED), ARTICLE 2

SOURCE : JOSÉ MARÍA BONILLA,
COLECCIÓN DE TRATADOS INTERNACIONALES
(MANAGUA : TIPOGRAFÍA INTERNACIONAL, 1909), PP. 369-370

TRANSLATION

Costa Rica-Nicaragua, Convention Additional to the Preliminary Convention on a Scientific Survey of 13 July 1868 relative to the improvement of the Colorado or San Juan Rivers (Esquivel-Rivas), San José, 21 December 1868

Article 2: The Government of Nicaragua, on its part, undertakes to stipulate, in case of subscribing a transit treaty, be it with nationals or with foreigners: that the tariffs for the shipment of products or merchandize for exportation or importation that may be established for Nicaragua, will be understood as established as well for Costa Rica, and that any gratitude, privilege or concession that Nicaragua obtains in regards to transportation on the San Juan River, will also be applied to Costa Rica, under equal terms.

COLECCION

DE

TRATADOS INTERNACIONALES

FORMADA POR

José María Bonilla

DE ORDEN DEL

XCELENTISIMO SEÑOR PRESIDENTE CONSTITUCIONAL
DE LA REPUBLICA

GENERAL DON J. SANTOS ZELAYA

MANAGUA
TIPOGRAFIA INTERNACIONAL—5ª CALLE SUR, NUM. 11
1909

CONVENCION

ENTRE

Nicaragua y Costa Rica,

ADICIONAL A LA DE 13 DE JULIO DE ESTE AÑO,
RELATIVA A LA MEJORA DE LOS RIOS
"COLORADO" O "SAN JUAN"

* * *

RIVAS * ESQUIVEL

1868

EL Gobierno de la República de Costa Rica y el Gobierno de la República de Nicaragua, para completar la Convención preliminar, celebrada en San José el trece de julio del corriente año, con relación á la mejora de uno de los dos puertos del Atlántico, nominados "San Juan del Norte ó Greytown" y "Boca del Colorado"; y habiendo los ingenieros de una y otra República hecho sus exploraciones y estudios competentes, y dado cuenta con los informes del caso, que han visto la luz pública; para resolver lo conveniente con el espíritu de la Convención referida, el Gobierno de Costa Rica ha conferido sus Plenos Poderes al señor Aniceto Esquivel, actual Secretario de Estado en el Despacho de Relaciones Exteriores, y el de la República de Nicaragua, al señor Anselmo H. Rivas, actual Secretario de Estado del mismo Gobierno.

Quienes, después de canjear sus respectivos Plenos Poderes, y de encontrarlos en buena y debida forma, han convenido en lo que sigue:

Artículo 1º

El Gobierno de Costa Rica concede al de Nicaragua las aguas del río Colorado, á fin de que, desviándolas de su curso actual en todo ó en parte, y echándolas sobre el río San Juan, pueda obtener el restablecimiento ó mejora del puerto de San Juan de Nicaragua.

Artículo 2º

El Gobierno de Nicaragua, por su parte, se compromete, en caso de celebrar algún contrato de tránsito, sea con naturales ó extranjeros, á estipular: que las tarifas sobre fletes de productos ó mercaderías de importación ó exportación que se establezcan para Nicaragua, se entiendan hechas también en favor de Costa Rica, y que cualquiera gracia, privilegio ó concesión que Nicaragua obtuviere, en cuanto al transporte sobre el río San Juan, se haga extensivo á Costa Rica, bajo el pie de perfecta igualdad.

Artículo 3º

Los buques de Costa Rica, que arribaren al puerto de San Juan del Norte, no pagarán derecho alguno, que no esté establecido para los buques nacionales de Nicaragua.

Artículo 4º

En el caso en que San Juan deje de ser un puerto franco, y que el Gobierno de Nicaragua sujete á registro ó aforo las mercaderías que se importen, ó los productos que se exporten por él, quedarán libres de tales formalidades y del pago de cualesquiera derechos, las mercaderías y productos que Costa Rica importe ó exporte.

Artículo 5º

Si en el caso anterior llegare á suceder que el Gobierno de Nicaragua, por algún trastorno interior, ó por hallarse empeñado en una guerra, no pudiere dar eficaz protección al puerto de San Juan, se concede al Gobierno de Costa Rica el derecho de enviar á dicho puerto la fuerza necesaria, para protager los intereses del comercio de Costa Rica, sin que el Gobierno de Nicaragua tenga que hacer ningún costo en esta guarnición.

Artículo 6º

El Gobierno de Nicaragua ratifica por esta Convención los Tratados que tiene celebrados sobre límites con el Gobierno de Costa Rica; y ambas partes se someten al arbitraje del Gobierno de los Estados Unidos de Norte América, para la decisión de cualquiera cuestión que se suscite, ya sobre aquellos Tratados ó bien sobre la ejecución del presente convenio.

Artículo 7º

Esta Convención será aprobada por el Presidente de la República de Costa Rica y por el Presidente de la República

Annex 13

COSTA RICA-NICARAGUA, TREATY FOR THE EXCAVATION OF AN INTEROCEANIC CANAL (JIMÉNEZ-MONTEALEGRE), SAN JOSÉ, 18 JUNE 1869, ARTICLE 1

SOURCE : 61 *BFSP* 1144

BRITISH AND FOREIGN

STATE PAPERS.

1870—1871.

VOL. LXI.

COMPILED BY THE LIBRARIAN AND KEEPER OF THE PAPERS,
FOREIGN OFFICE.

London:
WILLIAM RIDGWAY, 169, PICCADILLY.

1877.

dence that your combined action will be wise, statesmanlike, and in the best interests of the whole country.

U. S. GRANT.

TREATY between Costa Rica and Nicaragua, for the Excavation of an Interoceanic Canal.—Signed at San José, June 18, 1869.

[Ratified by the President of Costa Rica, February 21, 1870.]

(Translation.)

THE Republics of Costa Rica and Nicaragua, wishing to have the contract carried out that was made at Paris on the 6th of October, 1868,* between Dom Tomas Ayon, Representative of the Republic of Nicaragua, and M. Michel Chevalier, a French subject, for the excavation of an interoceanic canal, have agreed to conclude a Convention to determine the rights and obligations which are to appertain to Costa Rica for her accession to the said Contract. And for that purpose they have appointed their respective Plenipotentiaries, that is to say: His Excellency the President of the Republic of Costa Rica, Agapito Jimenez, Secretary of State in the Department of Foreign Affairs of this Republic; and

His Excellency the President of the Republic of Nicaragua, Mariano Montealegre, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua in the Republic of Costa Rica, who, after exchanging their full powers, and finding them in good and due form, have agreed upon the following Articles:

ART. I. The Republic of Costa Rica accedes to the Contract made at Paris on the 6th of October, 1868, between the Representative of the Republic of Nicaragua, Señor Dom Tomas Ayon, and M. Michel Chevalier, a French subject, for the excavation of an Interoceanic Canal; and Costa Rica guarantees to the Contractor (Concesionario) on her own territory, and in all that appertains to her, the same advantages as Nicaragua concedes to him, and which are stipulated in the following Articles.

II. The term of the concession shall be 99 years, reckoned from the day of the opening of the canal.

III. The Contractor is to choose the track which according to the investigations of those who understand the matter shall be considered most convenient; but it is declared at once that the canal must pass up the river San Juan to the Lake of Nicaragua, cross the lake, and terminate in the Pacific between the extreme points of Salinas and Realejo.

IV. The Republic of Costa Rica, the same as that of Nicaragua, shall have a right to be represented at the deliberations of the

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* See page 1266.

Annex 14

COSTA RICA-NICARAGUA, CONVENTION TO SUBMIT TO THE ARBITRATION OF THE GOVERNMENT OF THE UNITED STATES THE QUESTION IN REGARD TO THE VALIDITY OF THE TREATY OF 15 APRIL 1858 (ESQUIVEL-ROMAN), GUATEMALA, 24 DECEMBER 1886, ARTICLES 6, 7, 10

SOURCE : 168 *CTS* 371

Treaty between Costa Rica and Nicaragua for the Arbitration of the Validity of the Boundary Treaty of 15 April 1858, signed at Guatemala City, 24 December 1886

THIS translation is reproduced from *British and Foreign State Papers*, vol. LXXVII, p. 476.

The Arbitrator may delegate his duties, provided this does not interfere directly with the giving of his decision.

VI. If the decision of the Arbitration declares the validity of the Treaty, the same award shall declare whether Costa Rica has the right to navigate the River San Juan with ships of war or revenue boats. Also the decision aforesaid shall, in case of the validity of the said Convention, decide the other points of doubtful interpretation found by either of the Parties in the Treaty, and communicated to the other Party within 30 days from the exchange of the ratifications of this Convention.

VII. Whatever the decision of the Arbitration be, it shall be held to be obligatory between the Contracting Parties. No other recourse shall be admitted, and it shall come into force 30 days after it has been communicated to both Governments or to their Representative.

VIII. If the Treaty is declared invalid both Governments shall, within one year from the date of the receipt of the notification, come to an understanding on the demarcation of the boundary-line of their respective territories. If this understanding is not possible they shall conclude in the following year a Convention to submit the question of limits of both Republics to the decision of a friendly Government.

From the time the Treaty is declared invalid, and whilst there is no agreement between the Parties or there is no decision fixing the rights of both countries, those established by the Treaty of the 15th April, 1858, shall be respected.

IX. Pending the decision on the validity of the Treaty, the Government of Costa Rica consents to suspend the fulfilment of its Agreement of the 16th March last relative to the navigation of the River San Juan by a Government steamer.

X. In case the Arbitration decides that the Treaty of Limits is valid, the Contracting Governments shall, within the 90 days following the notification of this decision, name four Commissioners, two each, who shall take the proper measures with reference to the line of demarcation set forth in Article II of the said Treaty of the 15th April, 1858.

These measures, and the demarcation to which they refer, shall be done within 30 months from the date of the naming of the Commissioners.

These Commissioners shall be allowed to depart from the line laid down in the Treaty one mile in order to lay down natural lines or lines more distinguishable, but this deviation shall only be allowed when all the Commissioners are of one accord as to the point or points to be substituted.

XI. This Treaty shall be submitted for the approbation of the

Annex 15

COSTA RICA-NICARAGUA, CONVENTION (SOTO-CARAZO), MANAGUA, 26 JULY 1887 (UNRATIFIED)

SOURCE : *MEMORIA ANUAL DE LA SECRETARÍA DE RELACIONES EXTERIORES Y CARTERAS ANEXAS 1888*
(SAN JOSÉ : IMPRENTA NACIONAL, 1888)

TRANSLATION

Costa Rica-Nicaragua, Convention (Soto-Carazo), Managua, 26 July 1887

The Presidents of Costa Rica and Nicaragua, wishing to conclude all matters pending between the two Republics, and after having held talks in the presence of their respective Ministers of Foreign Affairs, have agreed to the following articles:

Article I.

The Government of Nicaragua withdraws its objections to the validity of the Treaty of Limits signed with the Government of Costa Rica on 15 April 1858, since it shall, for its part, obtain from Congress the second ratification, which it maintains is essential.

Article II.

In order to make the San Juan River navigable all year round, the Government of Costa Rica agrees that the waters required for this be taken from the Colorado River, in order to deposit them in the former and that the appropriate works be carried out for this purpose.

Article III.

The Government of Costa Rica shall contribute one fourth of the exact cost of improving navigation on the San Juan River, from its divide from the Colorado River to its mouth in the San Juan del Norte bay.

When the improvements are to be made, the contracting Governments shall appoint a scientific Commission to determine the extent of the work required and to present the corresponding budget. Once the sum of the cost is known, both Governments shall, likewise, agree upon how the necessary funds shall be provided and invested.

Article IV.

Nicaragua grants the Costa Ricans the perpetual right of free commercial navigation in the Lake of Nicaragua and in the part of the San Juan River where they do not currently possess that right.

The privilege granted by Nicaragua to Mr. F.A. Fallas, in the contract of 16th March 1877, to navigate steamships in the said waters shall, however, be respected.

Article V.

Costa Rica has the right to participate in the profits of the inter-oceanic canal that be constructed in the San Juan River; however, in regards to what part of the profits Costa Rica shall receive, the contracting Governments shall submit the matter to an arbitrator who shall make his decision based on the definitive boundary line adopted, and taking into account, on the one hand, the land and waters that Costa Rica concedes the company as well as the rights that the works could deprive from it, and, on the other hand, the land, waters and rights contributed by Nicaragua.

Once the definitive boundary line has been adopted for the canal, both Governments shall agree, at the request of either one, to appoint an arbitrator and establish the terms and procedures to be observed in the arbitration proceedings. Costa Rica shall, for its part, and with respect to its rights, accept the concession made by Nicaragua in the contract of 23 March 1887.

Article VI.

The aspects of questionable interpretation of the Treaty of 15 of April 1858 that have been presented to date are resolved in the following terms;

1°. –Punta de Castilla is currently understood as the furthest extreme of the right bank of the mouth of the San Juan River that is closest to the port of the same name. When the improvements mentioned in article two have been made to the river, Punta de Castilla shall be considered the furthest extreme point on the right bank of the San Juan River, once work has been carried out;

2°. –The centre point of the bay of Salinas shall be determined by the intersection of its larger and smaller axes;

3°. –The right, granted to Costa Rica, of navigation for purposes of commerce [*objetos de comercio*] in the San Juan River, from its mouth to three English miles before Castillo Viejo, does not include navigation with war or fiscal vessels exercising jurisdiction.

Article VII.

Nicaragua is free to make canal or transit concessions, provided they do not adversely affect the rights of Costa Rica, without the need to hear the consultative vote mentioned in article 8 of the Treaty of 15 April 1858, to which Costa Rica renounces.

Article VIII.

The Costa Rican fiscal vessels which need to transport guards to a point on the right bank of the San Juan River pertaining to it, or to a point on the Frio

River in the part that corresponds to it, or which have to transport relief to the established guard posts, may cross Nicaraguan waters, provided they do not exercise any jurisdictional act there.

Article IX.

In order to carry out the necessary measurements, establish the boundary line and make the appropriate demarcation, the Governments of both Republics shall, once this treaty has been exchanged, appoint the respective commissions, within a period of six months, in the manner that they agree upon.

The measurement and demarcation work should be concluded within ten years from the acceptance of the commissions.

Article X.

This treaty will be subjected to approval by Congress in both Republics, and its ratifications shall be exchanged in San Jose, Costa Rica or in Managua within a period of one hundred and twenty days as of this date or prior to this, if possible.

The arbitration convention held between the two Republics in Guatemala on 24th December 1886 shall remain in force until it is ratified and exchanged.

In witness whereof, the abovementioned Presidents of Costa Rica and Nicaragua sign and attach their seal to this document in duplicate, together with their Ministers of Foreign Affairs, in the city of Mangagua on 26 July eighteen eighty seven.

BERNARNDO SOTO
E. CARAZO
CLETO GONZALEZ VIQUEZ
FERNDO. GUZMAN

San José, 28 de junio de 1887.

Señor Ministro:

Refiriéndome á mi nota del 10 de mayo último, hoy tengo la satisfacción de anunciar á V. E. que el señor Presidente de esta República se propone embarcarse, en unión de su comitiva, en el vapor que debe tocar en Puntarenas el día 12 del entrante julio. Efectuará su desembarco en el puerto de Corinto y con el fin de facilitar su entrevista con el Excelentísimo señor Presidente Carazo, seguirá hasta Managua.

Aprovecho esta oportunidad para repetirme de V. E. atento servidor.

Cleto González Víquez.

A Su Excelencia el señor Ministro de Relaciones Exteriores de la República de Nicaragua.

Managua.

——:o:——

Los Presidentes de Costa Rica y Nicaragua, en el deseo de concluír todas las cuestiones pendientes entre ambas Repúblicas y después de haber conferenciado, asistidos de sus respectivos Ministros de Relaciones Exteriores, han convenido en los artículos siguientes:

Artículo I.

El Gobierno de Nicaragua retira las objeciones presentadas á la validez del Tratado de límites firmado con el Gobierno de Costa Rica el 15 de abril de 1858, pues por su parte obtendrá del Congreso la segunda ratificación que ha sostenido ser indispensable.

Artículo II.

Para hacer navegable el río San Juan en toda estación del año, el Gobierno de Costa Rica consiente en que se tomen del río Colorado las aguas que se necesiten, para echarlas en aquel río, y en que se practiquen con tal objeto las obras convenientes.

Artículo III.

El Gobierno de Costa Rica contribuirá con una cuarta parte de los gastos precisos á mejorar la navegación del río San Juan, desde la separación del Colorado hasta su desembocadura en la bahía de San Juan del Norte.

Cuando se trate de efectuar esta mejora, los Gobiernos contratantes nombrarán una Comisión científica que determine las obras que es preciso llevar á cabo y levante el presupuesto correspondiente. Una vez conocido el monto del costo, convendrán asimismo ambos Gobiernos la manera de arbitrar é invertir los fondos necesarios.

Artículo IV.

Nicaragua concede á los costarricenses el derecho perpetuo de libre navegación comercial en el Lago de Nicaragua y en la parte del río San Juan donde hoy no tienen esa facultad.

Se respetará sin embargo, el privilegio concedido por Nicaragua al señor F. A. Pellas, en contrato de 16 de marzo de 1877, para navegar con buques de vapor en dichas aguas.

Artículo V.

Costa Rica tiene derecho á participar de las utilidades del canal interoceánico que se practique en el río San Juan; mas acerca de qué parte de provechos haya de recibir Costa Rica, los Gobiernos contratantes se someterán á la decisión de un árbitro, el cual fallará con vista del trazado definitivo que se adopte, y teniendo en cuenta por un lado los terrenos y aguas que Costa Rica dé para la empresa y los derechos de que pueda privarle la obra, y por otro los terrenos, aguas y derechos con que Nicaragua contribuya.

Una vez adoptado el trazado definitivo para el canal, ambos Gobiernos se pondrán de acuerdo, á solicitud de cualquiera de ellos, para nombrar árbitro y señalar los términos y procedimientos que deban observarse en el juicio arbitral. Costa Rica aceptará por su parte, y en lo que se refiera á sus derechos, la concesión hecha por Nicaragua en contrato de 23 de marzo de 1887.

Artículo VI.

Los puntos de dudosa interpretación del Tratado de 15 de abril de 1858, que hasta ahora se han presentado, quedan resueltos en los términos siguientes:

1º—Se entiende por Punta de Castilla en la actualidad el extremo de la margen derecha de la desembocadura del río San Juan más próxima al puerto de dicho nombre. Cuando se practique la mejora del río de que habla el artículo 2º, será considerado como Punta de Castilla el extremo de la margen derecha del río San Juan, una vez compuesto;

2º—El punto céntrico de la bahía de Salinas será determinado por la intersección de sus dos ejes, mayor y menor;

3º—El derecho concedido á Costa Rica de navegar con objetos de comercio en el río San Juan, desde su boca hasta tres millas inglesas abajo del Castillo Viejo, no comprende el de navegar con buques de guerra ni fiscales ejerciendo jurisdicción.

Artículo VII.

Nicaragua podrá libremente hacer concesiones de canal ó de tránsito, cuando en ellas no se perjudiquen derechos de Costa Rica, sin necesidad de oír el voto consultivo de que habla el artículo 8º del Tratado de 15 de abril de 1858, y al cual renuncia Costa Rica.

Artículo VIII.

Las naves fiscales de Costa Rica que tuvieren que conducir resguardos á algún punto de la ribera derecha del San Juan que le pertenece ó al río Frío en la parte que le corresponde ó que tuvieren que llevar auxilios á los resguardos establecidos, podrán pasar por aguas de Nicaragua, siempre que en ellas no ejerzan acto alguno jurisdiccional.

Artículo IX.

Para llevar á cabo la mensura necesaria, fijar la línea de límites y amojonarla convenientemente, los Gobiernos de ambas Repúblicas nombrarán en un plazo que no exceda de seis meses, después de canjeado este tratado, las comisiones respectivas en la forma que para ello establezcan de acuerdo.

Los trabajos de medida y amojonamiento deberán concluirse dentro de diez años contados desde la aceptación de las comisiones.

Artículo X.

Este tratado será sometido á la aprobación de los Congresos de ambas Repúblicas, y sus rátificaciones serán canjeadas en San José de Costa Rica ó en Managua dentro de ciento veinte días contados de esta fecha ó antes si fuere posible.

Mientras no sea ratificado y canjeado, continuará en vigor y ejecución la convención de arbitraje celebrada entre ambas Repúblicas en Guatemala el 24 de diciembre de 1886.

En fe de lo cual, dichos Presidentes de Costa Rica y Nicaragua, firman y sellan el presente por duplicado, junto con sus Ministros de Relaciones Exteriores, en la ciudad de Managua, á veintiséis de julio de mil ochocientos ochenta y siete.

Bernardo Soto.

E. Carazo.

Cleto González Víquez.

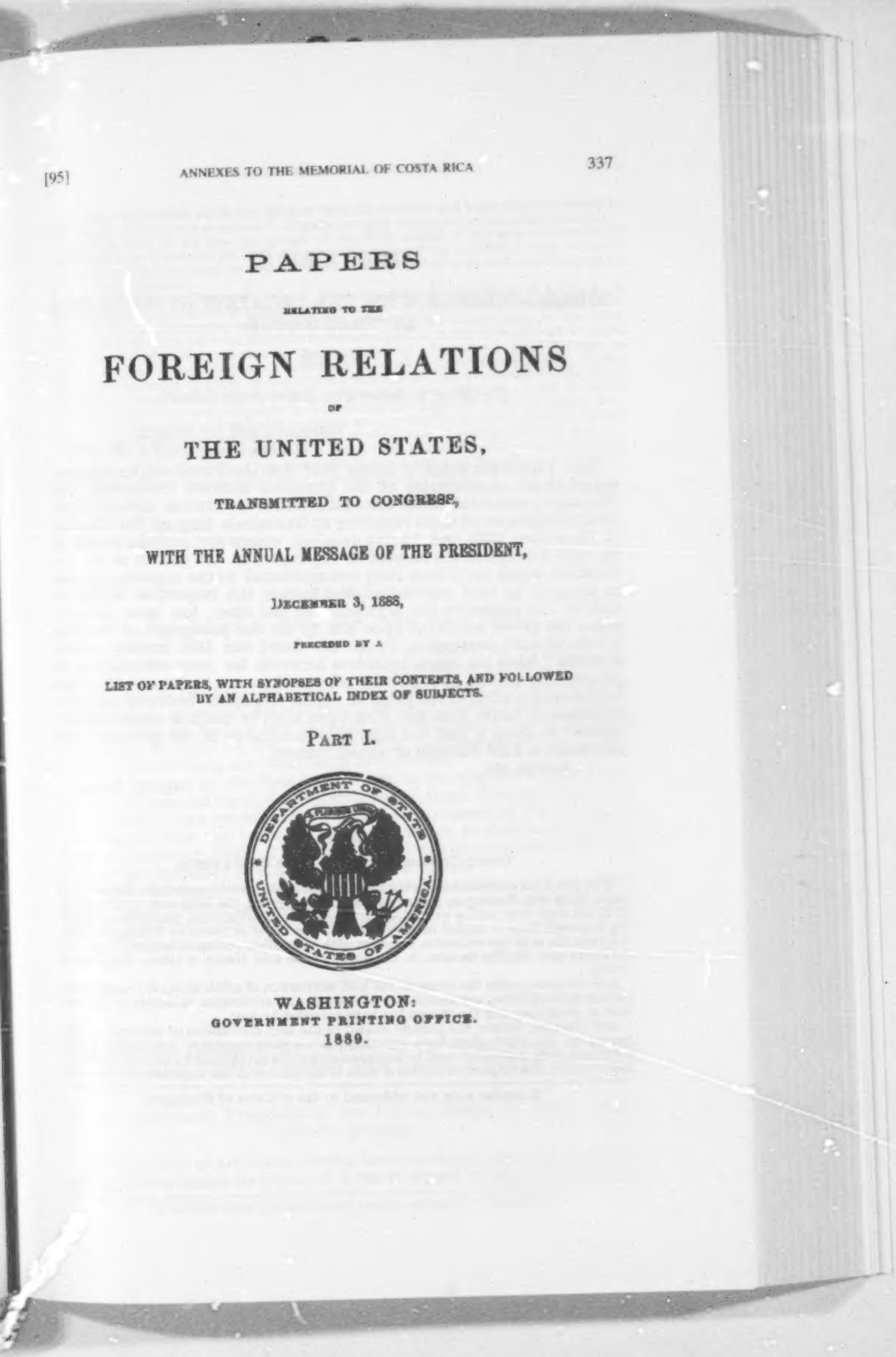
Fernando. Guzmán.

——:o:——

Annex 16

CLEVELAND AWARD UPON THE VALIDITY OF THE TREATY OF LIMITS OF 1858 BETWEEN COSTA RICA AND NICARAGUA, WASHINGTON, 22 MARCH 1888

SOURCE : *PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES*, TRANSMITTED TO CONGRESS,
WITH THE ANNUAL MESSAGE OF THE PRESIDENT, PART I,
3 DECEMBER 1888 (WASHINGTON :
GOVERNMENT PRINTING OFFICE, 1889)



PAPERS

RELATING TO THE

FOREIGN RELATIONS

OF

THE UNITED STATES,

TRANSMITTED TO CONGRESS,

WITH THE ANNUAL MESSAGE OF THE PRESIDENT,

DECEMBER 3, 1888,

PRECEDED BY A

LIST OF PAPERS, WITH SYNOPSES OF THEIR CONTENTS, AND FOLLOWED
BY AN ALPHABETICAL INDEX OF SUBJECTS.

PART I.

DEPARTMENT OF STATE
UNITED STATES OF AMERICA

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1889.

COSTA RICA.

CORRESPONDENCE WITH THE LEGATION OF COSTA RICA AT WASHINGTON.

No. 312.

Mr. Rives to Señor Don Pedro Perez Zeledón.

DEPARTMENT OF STATE,
Washington, January 16, 1888.

SIR: I have the honor to inform you* that the President, having consented to act as arbitrator of the questions between Costa Rica and Nicaragua, presented under the convention of arbitration signed by the plenipotentiaries of these republics at Guatemala City on the 24th day of December, 1886, and having received within the periods named in the said convention the respective arguments of the parties to the arbitration, which have been duly communicated to the opposing parties as required by said convention, and further, the respective replies of each of the parties to the arguments of the other, has been pleased, under the power conferred upon him by the last paragraph of the fifth article of said convention by an act dated the 16th instant, a copy of which I have the honor to inclose herewith for your information, to delegate his powers as arbitrator aforesaid to me, to the end that the fullest examination of the point or points in dispute between the Governments of Costa Rica and Nicaragua shall be made to enable the arbitrator to reach a just and equitable conclusion in the premises and pronounce a final decision or award thereon.

Accept, etc.,

G. L. RIVES.

[Inclosure.]

Grover Cleveland, President of the United States.

Whereas, by a convention of arbitration between the Government of the Republics of Costa Rica and Nicaragua, signed at Guatemala City on the 24th day of December, 1886, the high contracting parties agreed to submit to arbitration the question pending between them in regard to the validity of the treaty of limits of 15th April, 1858, between the said Governments, together with such other points of doubtful interpretation as may require decision in the event of the said treaty of limits being found valid;

And whereas, under the terms of the said convention of arbitration, the contracting parties have solicited my acceptance of the office of arbitration to decide such question or questions, and the charge has been accepted by me;

And whereas, within the periods named in the said convention of arbitration, the parties to the arbitration have submitted to me their respective arguments, which have been duly communicated to the opposing parties as required by said convention; and, further, the respective replies of each of the parties to the argument of the other have been laid before me in due time, so that all evidence and arguments necessary to a decision of the point or points in dispute are now before me as arbitrator thereof:

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* A similar note was addressed to the minister of Nicaragua.

And whereas, by the final paragraph of the fifth article of the said convention of arbitration of December 24, 1886, it is provided that "the arbitrator may delegate his powers, provided that he does not fail to intervene directly in the pronunciaton of the final decision":

Now, therefore, I, Grover Cleveland, President of the United States of America, in the capacity of arbitrator as aforesaid between the Governments of the Republics of Costa Rica and Nicaragua, and to the end that the fullest examination of the point or points in dispute between those Governments shall be made to enable me to reach a just and equitable conclusion in the premises and pronounce a final decision or award thereon, do by this present instrument delegate my powers to George L. Rives, Assistant Secretary of State, to the extent contemplated and permitted by the aforesaid convention of arbitration, hereby enjoining the said George L. Rives to use all due circumspection and diligence in examining the arguments and evidence submitted on both sides, and to make to me, as soon as may be, a report thereon for my consideration and upon which my decision of the matter in contention may rest.

Given under my hand and the seal of the United States this 16th day of January, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and twelfth.

GROVER CLEVELAND.

[SEAL.]
By the President:
T. F. BAYARD,
Secretary of State.

No. 313.

Mr. Bayard to Señor Don Pedro Perez Zeledón.

DEPARTMENT OF STATE,
Washington, March 22, 1888.

SIR: I have the honor to inform you* that I have received from the President, in triplicate, his award and decision in regard to the validity of the treaty of limits made between the republics of Costa Rica and Nicaragua on April 15, 1858, and the other questions submitted in connection therewith to the President's arbitration.

I am directed by the President to deliver one original of this award to the representative of the Government of Costa Rica and one original thereof to the representative of the Government of Nicaragua, in compliance with the terms of the treaty signed at Guatemala on the 24th of December, 1886. The third original will be retained in the custody of the Secretary of State of the United States.

I have the honor therefore to name the Department of State, at 12 o'clock noon of Saturday, the 24th instant, as the place and time to so deliver the President's award and decision.

I have, etc.,

T. F. BAYARD.

No. 314.

Award of the Arbitrator, the President of the United States, upon the validity of the Treaty of Limits of 1858 *between Nicaragua and Costa Rica.*

Grover Cleveland, President of the United States, to whom it shall concern, greeting:

The functions of arbitrator having been conferred upon the President of the United States by virtue of a treaty signed at the City of Guatemala on the 24th day of December, one thousand eight hundred and eighty-six, between the Republics of Costa Rica and Nicaragua, whereby it was agreed that the question pending between the contracting Governments in regard to the validity of their Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, should be submitted to the arbitration of the President of the United States of America; that if the arbitrator's award should determine that the treaty was valid, the same award should also declare whether Costa Rica has the right of navigation of the river San Juan with vessels of war or of the revenue service; and that in the same manner the arbitrator should decide, in case of the validity of the treaty, upon all the other points of doubtful interpretation which either of the parties might find in the treaty and should communicate to the other party within thirty days after the exchange of the ratifications of the said treaty of the 24th day of December, one thousand eight hundred and eighty-six.

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*A similar note was addressed to the minister of Nicaragua.

And the Republic of Nicaragua having duly communicated to the Republic of Costa Rica eleven points of doubtful interpretation found in the said Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight; and the Republic of Costa Rica having failed to communicate to the Republic of Nicaragua any points of doubtful interpretation found in the said last-mentioned treaty;

And both parties having duly presented their allegations and documents to the arbitrator, and having thereafter duly presented their respective answers to the allegations of the other party as provided in the treaty of the 24th day of December, one thousand eight hundred and eighty-six;

And the arbitrator pursuant to the fifth clause of said last-named treaty having delegated his powers to the honorable George L. Rives, Assistant Secretary of State, who, after examining and considering the said allegations, documents and answers, has made his report in writing thereon to the arbitrator;

Now, therefore, I, Grover Cleveland, President of the United States of America, do hereby make the following decision and award:

First. The above-mentioned Treaty of Limits, signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.

Second. The Republic of Costa Rica under said treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the river San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment.

Third. With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua, I decide as follows:

1. The boundary line between the Republics of Costa Rica and Nicaragua, on the Atlantic side, begins at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April, 1858. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.

2. The central point of the Salinas Bay is to be fixed by drawing a straight line across the mouth of the bay and determining mathematically the centre of the closed geometrical figure formed by such straight line and the shore of the bay at low-water mark.

3. By the central point of Salinas Bay is to be understood the centre of the geometrical figure formed as above stated. The limit of the bay

towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba, nearly true south to the westernmost portion of the land about Punta Secate.

4. The Republic of Costa Rica is not bound to concur with the Republic of Nicaragua in the expenses necessary to prevent the bay of San Juan del Norte from being obstructed; to keep the navigation of the river or port free and unembarrassed, or to improve it for the common benefit.

5. The Republic of Costa Rica is not bound to contribute any proportion of the expenses that may be incurred by the Republic of Nicaragua for any of the purposes above mentioned.

6. The Republic of Costa Rica can not prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, *provided* such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory, or in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same. The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank of the river San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

7. The branch of the river San Juan known as the Colorado River must not be considered as the boundary between the Republics of Costa Rica and Nicaragua in any part of its course.

8. The right of the Republic of Costa Rica to the navigation of the river San Juan with men-of-war or revenue-cutters is determined and defined in the second article of this award.

9. The Republic of Costa Rica can deny to the Republic of Nicaragua the right of deviating the waters of the river San Juan in case such deviation will result in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for inter-

oceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

In testimony whereof, I have hereunto set my hand and have caused the seal of the United States to be hereunto affixed.

Done in triplicate at the city of Washington, on the twenty-second day of March, in the year one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth.

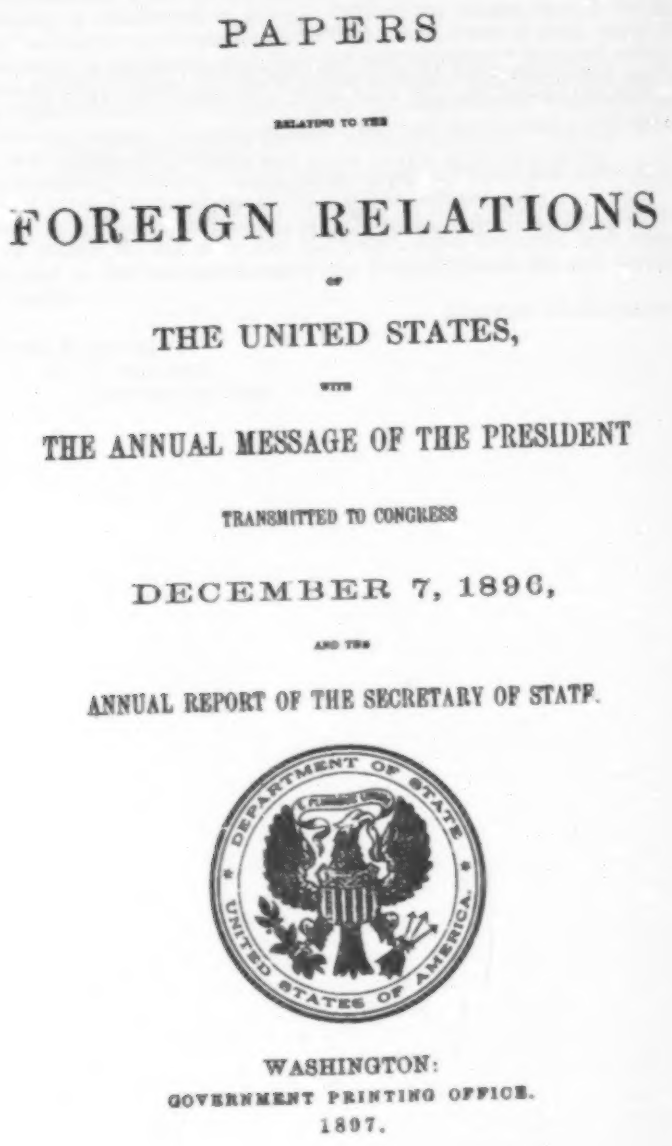
GROVER CLEVELAND.

By the President:
T. F. BAYARD,
Secretary of State.

Annex 17

COSTA RICA-NICARAGUA, DELIMITATION CONVENTION (PACHECO-MATUS), SAN SALVADOR, 27 MARCH 1896, ARTICLE 2

SOURCE : *PAPERS RELATING TO THE FOREIGN RELATIONS*
OF THE UNITED STATES, WITH THE ANNUAL MESSAGE
OF THE PRESIDENT
TRANSMITTED TO CONGRESS, 7 DECEMBER 1896
(WASHINGTON : GOVERNMENT PRINTING OFFICE, 1897)



PAPERS

RELATING TO THE

FOREIGN RELATIONS

OF

THE UNITED STATES,

WITH

THE ANNUAL MESSAGE OF THE PRESIDENT

TRANSMITTED TO CONGRESS

DECEMBER 7, 1896,

AND THE

ANNUAL REPORT OF THE SECRETARY OF STATE.

DEPARTMENT OF STATE · UNITED STATES OF AMERICA

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1897.

COSTA RICA.

ARBITRATION OF THE BOUNDARY DISPUTE BETWEEN NICARAGUA AND COSTA RICA.[1]

Mr. Calvo to Mr. Olney.

[Translation.]

LEGATION OF COSTA RICA,
Washington, May 1, 1896.

SIR: I had the honor to inform you, in the interview with which you were pleased to favor me yesterday, of a convention for the tracing and demarcation of the dividing line between the Republics of Costa Rica and Nicaragua having been signed the 27th of March last, in the capital of Salvador, with the honorable and fraternal mediation of the President of that State, conformably to the determination of the treaty of April 15, 1858, and the award of the President of the United States of America, Mr. Grover Cleveland; and of putting you in possession of the fact that, according to one of the stipulations of that convention, the two contracting Governments will proceed, by common consent, in regular course to request of the President of the United States of America that he consent to name an engineer who, representing the respective commissions of both countries and with the ample powers which will be conferred upon him by that convention, may decide any kind of difficulties which may arise in the indicated operation of fixing the boundary line.

It has been a source of the most pleasing satisfaction for me to note the good disposition shown by you in this matter, which could not have been settled in any other way, in treating by a final and amicable rule an important and vexatious question, finally decided in Washington, so far as the principle was concerned, for the good of the two nations interested; and, in conformity with your wish, I have the pleasure to send, inclosed, copy and translation of the convention in question, for your better information.

Be pleased, etc., J. B. CALVO.

[Inclosure.—Translation.]

Convention for the demarkation of the boundary line between the Republics of Costa Rica and Nicaragua, signed in the city of San Salvador on the twenty-seventh day of the month of March, of eighteen hundred and ninety-six.

The mediation of the Government of Salvador having been accepted by the Most Excellent the Presidents of Costa Rica and Nicaragua to settle the demarkation of the boundary line between the two Republics, they have named, respectively, as envoys extraordinary and ministers plenipotentiary, their excellencies Señors Don Leonidas Pacheco and Don Manuel C. Matus, who, after several interviews held in the presence of the minister of foreign relations, Señor Don Jacinto Castellanos, especially authorized to represent the Government of Salvador, their full powers being found to be in good and due form, with the attendance of the Most Excellent the President of the Republic, General Don Rafael A. Gutierrez, who has condescended to be present to lend greater solemnity to the act, have concluded the convention following:

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[1] See also under the Greater Republic of Central America.

ARTICLE I.

The contracting Governments bind themselves to each name a commission composed of two engineers or surveyors for the purpose of properly tracing and marking the boundary line between the Republics of Costa Rica and Nicaragua, pursuant to the provisions of the treaty of April 15, 1858, and the arbitration award of the President of the United States of America, Mr. Grover Cleveland.

ARTICLE II.

The commissions created by the foregoing article shall be completed by an engineer whose appointment shall be requested by both parties of the President of the United States of America, and whose duties shall be limited to the following:

Whenever in the carrying out of the operations the commissions of Costa Rica and Nicaragua shall disagree, the disputed point or points shall be submitted to the judgment of the engineer named by the President of the United States of America. The engineer shall have ample authority to decide any kind of dispute that may arise, and his decision shall be final as to the operations in question.

ARTICLE III.

Within three months after the exchange of the present convention when once duly ratified by the respective Congresses, the representatives in Washington of both contracting Governments shall proceed, jointly, to request the President of the United States of America to agree to the appointment of the engineer heretofore referred to and to select the same. If, owing to the absence of a representative in Washington of either of the two Governments, or for any other reason whatsoever, the request shall not be made jointly within the time specified, after the expiration thereof the representative in Washington of either Costa Rica or Nicaragua may make the said request separately, which request shall have the same effect as though made by both parties.

ARTICLE IV.

The appointment of the United States engineer once made, and within three months after such appointment, the demarkation of the boundary line shall be entered upon, and shall be concluded within twenty months after the inauguration of the work. The commissions of the contracting parties shall meet in San Juan del Norte within the term designated for the purpose, and shall begin their work at the end of the boundary line, which, according to the treaty and award above mentioned, starts from the Atlantic Coast.

ARTICLE V.

The contracting parties stipulate that if from any cause either the commission of the Republic of Costa Rica or that of Nicaragua should fail to appear at the place designated, on the day named for the beginning of the work, this shall be begun by the commission that may be on hand, the engineer of the United States Government being present, and whatever may be so done shall be valid and final in so far as regards the Republic failing to send its commissioners. The same course shall be pursued should any or all of the commissioners of either of the contracting Republics absent themselves after the beginning of the work, or should they refuse to carry out the same in the manner laid down in the award and treaty herein referred to, or in accordance with the decision of the engineer appointed by the President of the United States.

ARTICLE VI.

The contracting parties stipulate that the time established for the conclusion of the demarkation is not absolute, and, therefore, whatever may be done subsequent to the expiration thereof shall be valid, either because the said term is insufficient for the carrying out of all the operations, or by reason of the commissioners of Costa Rica and Nicaragua agreeing among themselves, with the consent of the United States engineer, to temporarily suspend the work, the remaining time of that primarily designated being insufficient for finishing the same.

ARTICLE VII.

In case of the temporary suspension of the work of demarkation whatever may be done up to the time of suspension shall be held as final and conclusive, and the boundaries in the respective parts shall be deemed as materially established, even though owing to unexpected and insuperable circumstances such suspension should continue indefinitely.

Annex 18

FIRST AWARD RENDERED BY THE UMPIRE, E. P. ALEXANDER, SAN JUAN DEL NORTE ON 30 SEPTEMBER 1897 IN THE BOUNDARY QUESTION BETWEEN COSTA RICA AND NICARAGUA

SOURCE : H. LA FONTAINE, *PASICRISIE INTERNATIONALE 1794-1900 : HISTOIRE DOCUMENTAIRE DES ARBITRAGES INTERNATIONAUX* (THE HAGUE : MARTINUS NIJHOFF PUBLISHERS, 1902, REPRINTED 1997), PP. 529-532

H. LA FONTAINE

PASICRISIE INTERNATIONALE
1794 –1900

HISTOIRE DOCUMENTAIRE DES ARBITRAGES INTERNATIONAUX

Préface par / Preface by

Pierre Michel Eisemann

BFDE 5202

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minado dentro de los veinte meses siguientes á la fecha de inauguración de los trabajos. Las Comisiones de las Partes Contratantes se reunirán en San Juan del Norte, dentro de los términos fijados al efecto, é iniciarán sus trabajos en el extremo de la línea divisoria que, según el Tratado y Laudo antes referidos, parte de la costa atlántica.

ART. V. — Las Partes Contratantes convienen en que si, por cualquier motivo, el día de iniciar los trabajos faltare en el lugar designado alguna de las Comisiones de las Repúblicas de Costa Rica ó Nicaragua, se dará principio á los trabajos por la Comisión de la otra República que se halle presente, con la concurrencia del señor Ingeniero del Gobierno norteamericano, y será válido y definitivo lo que en tal forma se haga, y sin lugar á reclamo por parte de la República que haya dejado de enviar sus Comisionados. Del mismo modo se procederá si se ausentaren algunos de los Comisionados, ó todos, de cualquiera de las Repúblicas Contratantes, una vez iniciadas las obras ó si rehuyeren la ejecución de ellas en la forma en que señalan el Laudo y Tratado aquí referidos ó con arreglo á la decisión del Ingeniero del señor Presidente de los Estados Unidos.

ART. VI. — Las Partes Contratantes convienen en que el plazo fijado para la conclusión del amojonamiento no es perentorio, y por tanto será válido lo que después de su vencimiento se hiciere, bien por haber sido aquel plazo insuficiente para la práctica de todas las operaciones, ó bien por haber convenido los Comisionadus de Costa Rica y Nicaragua entre sí y de acuerdo con el Ingeniero norteamericano, en suspender temporalmente las obras y no bastar para concluirlas el plazo que quede del fijado.

ART. VII. — Caso de suspensión temporal de los trabajos de amojonamiento, se tendrá lo hecho hasta entonces por definitivo y concluído, y por fijados materialmente los límites en la parte respectiva, aun cuando, por circumstancias inesperadas é insuperables, dicha suspensión continuase indefinidamente.

ART. VIII. — El libro de actas de las operaciones, que se llevará por triplicado y que firmarán y sellarán debitamente los Comisionados, sera, sin necesidad de aprobación ni de ninguna otra formalidad por parte de las Republicas signatarias, el titulo de demarcación definitiva de sus límites.

ART. IX. — Las actas á que se refiere el artículo anterior se extenderán en la siguiente forma: se consignará todos los días, al concluir las obras, minuciosa y detalladamente todo lo hecho, expresándose el punto de partida de las operaciones del día, la clase de mojones construídos ó adoptados, la distancia á que queden unos de otros, el arrumbamiento de la línea que determina el común lindero, etc. Caso de que hubiere discusión entre las Comisiones de Costa Rica y Nicaragua respecto de algún punto, se consignará en el acta respectiva la cuestión ó cuestiones debatidas y la resolución del Ingeniero norteamericano. Las actas se llevarán por triplicado: la Comisión de Costa Rica conservará uno de los ejemplares, otro lo de Nicaragua, y el tercero el Ingeniero norteamericano, para depositario, una vez concluídas las operaciones, en el Departamento de Estado de Washington.

ART. X. — Los gastos que se ocasionen con motivo del envío y permanencia del señor Ingeniero norteamericano, así como los sueldos que le correspondan durante todo el tiempo que dure en el ejercicio de sus funciones, serán pagados, por mitades, por las dos Repúblicas signatarias.

ART. XI. — Las Partes Contratantes se comprometen á recabar las ratificaciones de esta Convención de sus respectivos Congresos, dentro de seis meses, á contar de esta fecha, aunque para ello deba hacerse convocatoria extraordinaria de aquellos Altos Cuerpos, y el canje subsiguiente se verificará dentro del mes siguiente á la fecha de la última de las ratificaciones indicadas, en San José de Costa Rica ó en Managua.

ART. XII. — El trascurso de los términos de que antes se ha hablado, sin la ejecución de los actos para los cuales han sido estipulados, no produce la caducidad de la presente Convención, y se tratará de llenar la omisión por parte de la República á que corresponda verificarlo, dentro del mas breve término posible.

En fe de lo cual firman y sellan por duplicado la presente Convención, en la ciudad de San Salvador, á los veintisiete días del mes de marzo de mil ochocientos noventa y seis[1].

First award rendered, to San Juan del Norte, by the umpire, M. E. P. Alexander, on September 30, 1897, in the boundary question, between Costa Rica and Nicaragua.

San Juan del Norte, Nicaragua,
September 30, 1897.

In pursuance of the duties assigned me by my commission as engineer-arbitrator to your two bodies, with the power to decide finally any points of difference, that may arise in tracing and marking out the boundary line between the two republics, I have given careful study and

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[1] *Memoria de Relaciones exteriores* (Costa Rica), 1897, p. 28.

consideration to all arguments, counter arguments, maps, and documents submitted to me in the matter of the proper location of the initial point of the said boundary line upon the Caribbean coast.

The conclusion at which I have arrived and the award I am about to make do not accord with the views of either commission. So, in deference to the very excellent and earnest arguments so faithfully and loyally urged by each commission for its respective side, I will indicate briefly my line of thought and the considerations which have seemed to me to be paramount in determining the question; and of these considerations the principal and the controling one is that we are to interpret and give effect to the Treaty of April 15, 1858, in the way in which it was mutually understood at the time by its makers.

Each commission has presented an elaborate and well argued contention that the language of that treaty is consistent with its claims for a location of the initial point of the boundary line at a place which would give to its country great advantages. The points are over six miles apart, and are indicated on the map accompanying this award.

The Costa Rican claim is located on the left-hand shore or west headland of the harbor; the Nicaraguan on east headland of the mouth of the Taura branch.

Without attempting to reply in detail to every argument advanced by either side in support of his respective claim, all will be met and sufficiently answered by showing that those who made the treaty mutually understood and had in view another point, to wit, the eastern headland at the mouth of the harbor.

It is the meaning of the men who framed the treaty wich we are to seek, rather than some possible meaning which can be forced upon isolated words of sentences. And this meaning of the men seems to me abundantly plain and obvious.

This treaty was not made hastily or carelessly. Each State had been wrought up by years of fruitless, negotiations to a state of readiness for war in defense of what it considered its rights, as is set forth in article 1. In fact, war had actually been declared by Nicaragua on November 25, 1857, when, through the mediation of the Republic of Salvador, a final effort to avert it was made, another convention was held, and this treaty resulted. Now, we may arrive at the mutual understanding finally reached by its framers by first seeking in the treaty as a whole for the general idea or scheme of compromise upon which they were able to agree. Next, we must see that this general idea of the treaty as a whole harmonizes fully with any description of the line given in detail, and the proper names of all the localities used, or not used, in connection therewith, for the non use of some names may be as significant as the use of others. Now, from the general consideration of the treaty as a whole, the scheme of compromise stands out clear and simple.

Costa Rica was to have as a boundary line the right or southeast bank of the river, considered as an outlet for commerce, from a point 3 miles below Castillo to the sea.

Nicaragua was to have her prized *sumo imperio* of all the waters of this same outlet for commerce, also unbroken to the sea.

It is to be noted that this division implied also, of course, the ownership by Nicaragua of all islands in the river and of the left or northwest bank and headland.

This division brings the boundary line (supposed it to be traced downward along the right bank from the point near Castillo) across both the Colorado and the Taura branches.

It can not follow either of them, for neither is an outlet for commerce, as neither has a harbor at its mouth.

It must follow the remaining branch, the one called the Lower San Juan, through its harbor and into the sea.

The natural terminus of that line is the right-hand headland of the harbor mouth.

Next let us note the language of description used in the treaty telling whence the line is to start and how it is to run, leaving out for the moment the proper name applied to the initial point. It is to start «at the mouth of the river San Juan de Nicaragua, and shall continue following the right bank of the said river to a point three English miles from Castillo Viejo».

This language is evidently carefully considered and precise, and there is but one starting point possible for such a line, and that is at the right headland of the bay.

Lastly, we come to the proper name applied to the starting point, «the extremity of Punta de Castillo». This name Punta de Castillo does not appear upon a single one of all the original maps of the bay of San Juan which have been presented by either side, and which seem to include all that were ever published before the treaty or since. This is a significant fact, and its meaning is obvious. Punta de Castillo must have been, and must have remained, a point of no importance, political or commercial, otherwise it could not possibly have so utterly escaped note or mention upon the maps. This agrees entirely with the caracteristics of the mainland and the headland on the right of the bay. It remains until to-day obscure and unoccupied, except by the hut of a fisherman. But the identification of the locality is still further put beyond all question by the incidental mention, in another article of the treaty itself, of the name Punta de Castillo.

In Article V Costa Rica agrees temporarily to permit Nicaragua to use Costa Rica's side of the harbor without payment of port dues, and the name Punta de Castillo is plainly applied to it. Thus we have, concurring, the general idea of compromise in the treaty as a whole, the literal description of the line in detail, and the verification of the name applied to the initial point by its incidental mention in another portion of the treaty, and by the concurrent testimony of every map maker of every nation, both before the treaty and since, in excluding this name from all other portions of the harbor. This might seem to be sufficient argument upon the subject, but it will present the whole situation in a still clearer light to give a brief explanation of the local geography and of one special peculiarity of this Bay of San Juan.

The great feature in the local geography of this bay, since our earliest accounts of it, has been the existence of an island in its outlet, called on some early maps the island of San Juan. It was an island of such importance as to have been mentioned in 1820 by two distinguished authors, quoted in the Costa Rican reply to Nicaragua's argument (page 12), and it is an island to-day, and so appears in the map accompanying this award.

The peculiarity of this bay, to be noted, is that the river brings down very little water during the annual dry season. When that happens, particularly of late years, sand bars, dry at all ordinary tides, but submerged more or less and broken over by the waves at all high ones, are formed, frequently reaching the adjacent headlands, so that a man might cross dry-shod.

Now, the whole claim of Costa Rica is based upon the assumption that on April 15, 1858, the date of the treaty, a connection existed between the island and the eastern headland, and that this converted the island into mainland, and carried the initial point of the boundary over to the western extremity of the island. To this claim there are at least two replies, either one seeming to me conclusive.

First, the exact state of the bar on that day can not be definitely proven, which would seem to be necessary before drawing important conclusions.

However, as the date was near the end of the dry season, it is most probable that there was such a connection between the island and the eastern Costa Rican shore as has been described. But even if that be true, it would be unreasonable to suppose that such temporary connection could operate to change permanently the geographical character and political ownership of the island. The same principle, if allowed, would give to Costa Rica every island in the river to which sand bars from her shore had made out during that dry season. But throughout the treaty the river is treated and regarded as an outlet of commerce. This implies that it is to be considered as in average condition of water, in which condition alone it is navigable.

But the overwhelming consideration in the matter is that by the use of the name of Punta de Castillo for the starting point, instead of the name Punta Arenas, the makers of the treaty intended to designate the mainland on the east of the harbor. This has already been discussed, but no direct reply was made to the argument of Costa Rica quoting three authors as applying the name Punta de Castillo to the western extremity of the before-mentioned island, the point invariably called Punta Arenas by all the naval and other officers, surveyors, and engineers who ever mapped it.

These authors are L. Montufar, a Guatemalan, in 1887; J. D. Gamez, a Nicaraguan, in 1889, and E. G. Squier, an American, date not given exactly, but subsequent to the treaty. Even of these, the last two merely used, once each, the name Punta de Castillo as an alternate for Punta Arenas. Against this array of authoriry we have, first, an innumerable number of other writers clearly far more entitled to confidence; second, the original makers of all the maps, as before pointed out, and third, the framers of the treaty itself, by their use of Punta de Castillo in Article V.

It must be borne in mind that for some years before the making of this treaty Punta Arenas had been by far the most important and conspicuous point in the bay. On it were located the wharves, workshops, offices, etc., of Vanderbilt's great transit company, conducting the through line from New-York to San Francisco during the gold excitement of the early fifties. Here the ocean and river steamers met and exchanged passengers and cargo. This was the point sought to be controlled by Walker and the filibusters.

The village of San Juan cut no figure at all in comparison, and it would doubtless be easy to produce, by hundreds, references to this point as Punta Arenas by naval and diplomatic officers of all prominent nations, by prominent residents and officials, and by engineers and surveyors constantly investigating the canal problem, and all having a personal knowledge of the locality.

In view of all these circumstances, the jealousy with which each party to the treaty defined what it gave up and what it kept, the prominence and importance of the locality, the concurrence of all the original maps in the name, and its universal notoriety, I find it impossible to conceive that Nicaragua had conceded this extensive and important territory to Costa Rica, and that the latter's representative had failed to have the name Punta Arenas appear anywhere in the treaty. And for reasons so similar that it is unnecessary to repeat them, it is also impossible to conceive that Costa Rica should have accepted the Taura as her boundary and that Nicaragua's representative should have entirely failed to have the name Taura appear anywhere in the treaty.

Having then designated generally the mainland east of Harbor Head as the location of the initial point of the boundary line, it now becomes necessary to specify it more minutely, in order that the said line may be exactly located and permanently marked. The exact location of the initial point is given in President Cleveland's award as the extremity of Punta de Castilio, at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858.

A careful study of all available maps and comparisons between those made before the treaty and those of recent date made by boards of engineers and officers of the canal company, and one of to-day made by ourselves to accompany this award, makes very clear one fact: The exact spot which was the extremity of the headland of Punta de Castillo April 15, 1858, has long been swept over by the Caribbean Sea, and there is too little concurrence in the shore outline of the old maps to permit any certainty of statement of distance or exact direction to it from the present headland. It was somewhere to the northeastward, and probably between 600 and 1600 feet distant, but it can not now be certainly located. Under these circumstances it best fulfills the demands of the treaty and of President Cleveland's award to adopt what is practically the headland of to-day, or the northwestern extremity of what seems to be the solid land, on the east side of Harbor Head Lagoon.

I have accordingly made personal inspection of this ground, and declare the initial line of the boundary to run as follows, to wit:

Its direction shall be due northeast and southwest, across the bank of sand, from the Caribbean Sea into the waters of Harbor Head Lagoon. It shall pass at its nearest point, 300 feet on the northwest side from the small hut now standing in that vicinity. On reaching the waters of Harbor Head Lagoon the boundary line shall turn to the left, or southeastward, and shall follow the water's edge around the harbor until it reaches the river proper by the first channel met. Up this channel, and up the river proper, the line shall continue to ascend as directed in the treaty[1].

Segundo Laudo sobre límites entre las Repúblicas de Nicaragua y Costa Rica, firmado en San Juan del Norte, Diciembre 20 de 1897.

En cumplimiento otra vez de mis deberes como Ingeniero Arbitro entre los dos Honorables Cuerpos de Ustedes, he sido llamado para decidir la cuestión sometida á mí en el acta del 7 del presente mes, como se manifesta en el siguiente páraffo del libro de sesiones, á saber: «Propuso la Comisión Costaricense que se proceda á medir la línea que continúe desde el punto inicial y sigue por la margen de Harbour Head, y después por la del caño mas próximo hasta encontrar el río propio de San Juan, siguiendo la de éste hasta el punto que diste tres millas abajo del Castillo Viejo; que se levante el plano de dicha línea y que se incorpore todo en las actas día por día en las sesiones. La de Nicaragua manifesto que el trabajo de la medida y levantamiento del plano en esa parte de la línea no tiene valor ni objeto útil porque, según el Tratado y el Laudo del General E. P. Alexander, el límite divisorió lo forma la margen derecho del Harbour y del río, y que siendo así, es variable y no línea fija; y por tanto el plano y los datos que se obtengan no corresponderán nunca á la verdadera línea divisorio. En tal estado determinan ambas Comisiones oír la decisión del señor Arbitro sobre este punto, á cuyo fin le presentarán sus respectivos fundamentos dentro del término de ocho días.»

Han sido recibidos y debidamente considerados los referidos argumentos de cada parte. Debe de hacerse notar para una clara inteligencia de la cuestión propuesta que en la parte baja de su curso el río San Juan corre al través de un delta llano y arenoso, y que son evidentemente posibles no solamente acrecimientos ó disminuciones graduales en sus márgenes, sino cambios enteros de sus caños. Estos cambios pueden ser más o menos rápidos y repentinos por causas no siempre aparentes y aún sin la concurrencia de factores especiales tales como terremotos ó grandes tempestades. Son abundantes los ejemplos de caños anteriores ahora abandonados, y de márgenes que estan cambiando hoy día por graduales acrecimientos ó disminuciones.

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[1] *Monthly Bulletin of the Bureau of the American Republics*, 1897, vol. V, p. 909.

Annex 19

UNITED STATES-NICARAGUA, CONVENTION FOR THE CONSTRUCTION OF A CANAL BY THE RIVER SAN JUAN (CHAMORRO-WEITZEL), WASHINGTON, D.C., 8 FEBRUARY 1913

SOURCE : *BEFORE THE CENTRAL AMERICAN COURT OF JUSTICE : THE REPUBLIC OF COSTA RICA AGAINST THE REPUBLIC OF NICARAGUA* (WASHINGTON : PRESS OF GIBSON BROS., INC., 1916), APPENDIX L, PP. 82-86

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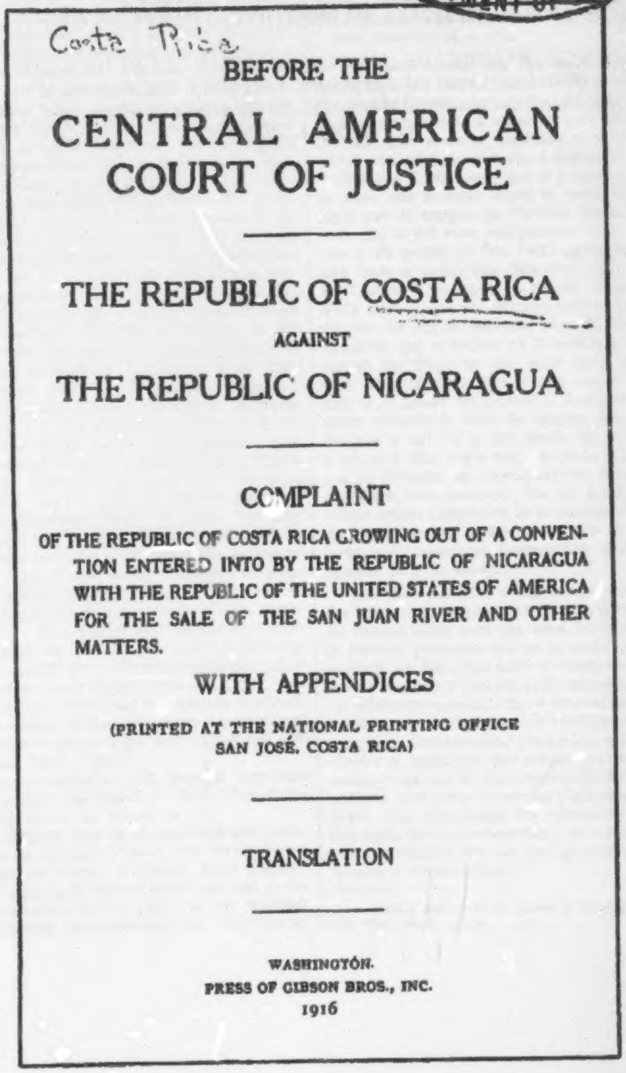

Costa Rica

BEFORE THE

CENTRAL AMERICAN COURT OF JUSTICE

THE REPUBLIC OF COSTA RICA

AGAINST

THE REPUBLIC OF NICARAGUA

COMPLAINT

OF THE REPUBLIC OF COSTA RICA GROWING OUT OF A CONVENTION ENTERED INTO BY THE REPUBLIC OF NICARAGUA WITH THE REPUBLIC OF THE UNITED STATES OF AMERICA FOR THE SALE OF THE SAN JUAN RIVER AND OTHER MATTERS.

WITH APPENDICES

(PRINTED AT THE NATIONAL PRINTING OFFICE
SAN JOSÉ, COSTA RICA)

TRANSLATION

WASHINGTON.
PRESS OF GIBSON BROS., INC.
1916

APPENDIX L.

TEXT OF THE CONVENTION BETWEEN THE UNITED STATES AND NICARAGUA FOR THE CONSTRUCTION OF A CANAL BY WAY OF THE SAN JUAN RIVER.

(As published in *La República*, No. 8310, of July 4, 1913, at San José de Costa Rica.)

IS IT AN "OPTION" OR A DEFINITIVE TRANSACTION?

The following is the text of a convention entered into between the United States and Nicaragua, against which the Government of Costa Rica protests, and which is called a simple "option" by the Nicaraguan Government. It is published so that the Costa Rican people may have an exact knowledge of that transaction.

CONVENTION.

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere cooperation for all purposes of mutual advantage and interest to the two nations; and the Government of Nicaragua being desirous to promote in every way economic development and prosperity under orderly and lawful government and the maintenance of its rights as secured by the Washington Conventions; and the Government of the United States being in full sympathy with these aims and desiring to lend to the Government of Nicaragua all proper assistance in these matters and also in the furtherance of various public works and measures conducive to its welfare and economic development; and it being the desire of both Governments to reaffirm the principle of the first paragraph of the Protocol of December 1, 1900, and to provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the Great Lake of Nicaragua or via any other route over Nicaraguan territory, whenever the construction of such canal shall be deemed conducive to the interests of both countries; and the Government of Nicaragua, wishing to facilitate in every way possible the successful construction, maintenance, and operation of such canal and also the maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a convention to these ends, and have accordingly appointed as their plenipotentiaries, the Government of the United States, George T. Weitzel, Envoy Extraordinary and Minister Plenipotentiary of the United States of America; and the Government of Nicaragua, Diego Manuel Chamorro, Minister for Foreign Affairs of the Republic of Nicaragua, who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The Government of Nicaragua grants in perpetuity to the Government of the United States the unencumbered exclusive rights necessary and convenient to the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by way of any other route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated, and maintained to be fixed by mutual consultation between the two Governments whenever the construction of such canal shall be decided upon.

ARTICLE II.

In order to facilitate the protection of the Panama Canal and of the canal, canal route, and the rights contemplated by the present convention and also to enable the United States to take any measure or to assist the Government of Nicaragua in any measures necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn and Little Corn Islands and covenants that, at such time and at such place on the Gulf of Fonseca as the Government of the United States may designate, the Government of the United States shall have the right to establish, operate and maintain for ninety-nine years a naval base.

The Government of the United States shall have the option of renewing either or both of the above grants contained in this article upon the expiration of the ninety-nine years aforesaid.

ARTICLE III.

The Government of Nicaragua hereby grants to the Government of the United States in perpetuity the right of ships of the merchant marine of the United States to engage in coastwise trade in Nicaragua, either by way of the aforementioned canal or otherwise, with a right to discharge or load in part or in whole at all Nicaraguan ports while engaged in any voyage on terms identical with those imposed on Nicaraguan citizens or vessels.

ARTICLE IV.

In consideration of the foregoing stipulations and of the purposes of this convention, the Government of the United

States shall pay, for the benefit of the Government of Nicaragua, the sum of three million dollars ($3,000,000), United States Gold Coin of the present weight and fineness such payment to be made to a depository, an American banking corporation designated by the Secretary of State of the United States, and to be disbursed in the construction of public works or for the benefit of public education or the advancement of the welfare of Nicaragua in a manner to be determined by the two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

The payment above referred to shall be made within one year from the date of the exchange of ratifications of this convention.

ARTICLE V.

This convention shall be ratified by the High Contracting Parties according to their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In faith whereof we, the respective plenipotentiaries, have hereunto affixed our hands and seals.

Done in duplicate in the English and Spanish languages at Managua, this eighth day of February, nineteen hundred and thirteen.

GEORGE T. WEITZEL. [SEAL]
DIEGO MANUEL CHAMORRO. [SEAL]

The President of the Republic, having examined the foregoing convention and finding it to be in accordance with the instructions given to the Plenipotentiary charged with its negotiation,

BE IT RESOLVED,

That it be approved and submitted to the Assembly for action according to law. Executive Palace, Managua, February 9, 1913.

[SEAL] A. DIAZ.

D. M. CHAMORRO,
Minister of Foreign Relations.

[SEAL]

* * * * * * *

The Congress of Nicaragua, as is well known, ratified this contract in all its parts.

Annex 20

UNITED STATES-NICARAGUA, CONVENTION FOR THE CONSTRUCTION OF A CANAL BY THE RIVER SAN JUAN (BRYAN-CHAMORRO), WASHINGTON, D.C., 5 AUGUST 1914

SOURCE : 220 *CTS* 215-218

5 August

Treaty between *Nicaragua* and the *United States* for the Construction of an Interoceanic Canal, signed at Washington

English text—Malloy, 2740

Also De Martens, 3, IX, 350—A.J.I.L., X, 258—Brit. For., CVIII, 520—U.S. Stat., XXXIX, 1661—Bevans, X, 379

Signed at Washington August 5, 1914; ratification advised by the Senate with amendments February 18, 1916; ratified by the President June 19, 1916; ratified by Nicaragua April 13, 1916; ratifications exchanged at Washington June 22, 1916; proclaimed June 24, 1916.

(Treaty Series, No. 624; 39 Statutes at Large, 1661.)

ARTICLES.

I. Perpetual grant of interoceanic canal route by way of San Juan River and Lake Nicaragua.
II. Ninety-nine year leases of Great and Little Corn Islands and of naval base rights on Gulf of Fonseca; leases renewable.
III. United States to pay Nicaragua $3.000,000.
IV. Ratification.

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere cooperation for all purposes of their mutual advantage and interest and to

provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the interests of both countries, and the Government of Nicaragua wishing to facilitate in every way possible the successful maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a Convention to these ends, and have accordingly appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Nicaragua, Señor General Don Emiliano Chamorro, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States;

Who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of an interoceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated and maintained to be agreed to by the two governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

ARTICLE II.

To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of ninety-nine years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of ninety-nine years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

In consideration of the foregoing stipulations and for the purposes contemplated by this Convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this Convention, pay for the benefit of the Republic of Nicaragua the sum of three million dollars United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

ARTICLE IV.

This Convention shall be ratified by the High Contracting Parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year nineteen hundred and fourteen.

WILLIAM JENNINGS BRYAN [SEAL.]
EMILIANO CHAMORRO [SEAL.]

(Treaty Series, No. 624.)

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and the Republic of Nicaragua granting to the United States the exclusive proprietary rights for the construction and operation of an interoceanic canal by a Nicaraguan route, the lease of certain islands, and the right to establish a naval base on the Gulf of Fonseca, was concluded and signed by their respective Plenipotentiaries at Washington, on the fifth day of August, one thousand nine hundred and fourteen, the original of which Convention, being in the English and Spanish languages is, as amended by the Senate of the United States, word for word as follows:

[The treaty as above.]

And whereas, the advice and consent of the Senate of the United States to the ratification of the said Convention was given with the following proviso: "*Provided*, That, whereas, Costa Rica, Salvador and Honduras have protested against the ratification of the said Convention in the fear or belief that said Convention might in some respect impair existing rights of said States; therefore, it is declared by the Senate that in advising and consenting to the ratification of the said Convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said Convention is intended to affect any existing right of any of the said named States;"

And whereas, the said understanding has been accepted by the Government of Nicaragua;

And whereas, the said Convention, as amended by the Senate of the United States, has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the twenty-second day of June, one thousand nine hundred and sixteen;

Now, therefore, be it known that I, Woodrow Wilson, President of the United States of America, have caused the said Convention, as amended, and the said understanding to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this twenty-fourth of June in the year of our Lord one thousand nine hundred and sixteen,
[SEAL] and of the Independence of the United States of America the one hundred and fortieth.

WOODROW WILSON

By the President:
ROBERT LANSING,
Secretary of State.

Annex 21

REPUBLIC OF COSTA RICA V. *REPUBLIC OF NICARAGUA*, CENTRAL AMERICAN COURT OF JUSTICE, OPINION AND DECISION OF THE COURT, 30 SEPTEMBER 1916

SOURCE : 11 *AJIL* 181-229

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JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

COSTA RICA v. NICARAGUA [1]

CENTRAL AMERICAN COURT OF JUSTICE

San José de Costa Rica, on the thirtieth day of September, nineteen hundred and sixteen, at seven o'clock, p. m.

In the action commenced and maintained by the Government of the Republic of Costa Rica against the Government of the Republic of Nicaragua, arising out of the conclusion of a treaty between the latter and the Government of the United States of North America, relating to the construction of an interoceanic canal, the Court, having considered the proceedings had herein, hereby renders its decision thereof.

Preliminary Chapter

It appears:

That on the 24th of March of the current year the Licentiate don Luís Castro Ureña, appearing in the name, and as the representative, of the Government of Costa Rica, in accordance with powers to that end duly exhibited, brought before this Court a complaint against the Government of Nicaragua wherein were set forth the arguments of fact and law in support of his claims, together with the evidence he considered pertinent to the action.

Section I

The Court being without a full bench because of the absence therefrom of the member from Nicaragua, and being thereby disqualified to pass upon the first step in the proceedings invoked by the complaint, the Permanent Committee proceeded to prescribe the measures necessary for the immediate completion of the Court and to that end dispatched an urgent telegram to the absent member requesting him to forego the enjoyment of the balance of his vacation in view of the fact that the Government of Costa Rica had presented a complaint against the Government of his country. Anticipating, however, that the judge might not be able to return immediately to his place on the bench, the Permanent Committee also addressed itself to His Excellency the Minister of Foreign Relations of Nicaragua calling his attention to the situation and asking him to make the necessary dispositions for the completion of the Court by sending the substitute justice.

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[1] Translation published by the Costa Rican Legation, Washington, D.C. The official text of the decision is contained in *La Gaceta* (Costa Rica), October 7, 1916.

It appears:

That the absent justice, in reply to these urgent appeals, stated that he would make an effort to return to Costa Rica on the next steamer, and that, should this be impossible, he would immediately so notify the Minister of Foreign Relations of his country. That high functionary, on his part, in a telegraphic dispatch of April 1, stated that he had been advised of the complaint brought before the Court and that the telegraphic communication addressed to him by the Secretary of the Permanent Committee was answered by the reply he had given to His Excellency the Costa Rican Secretary of Foreign Relations when the latter, in his turn, had notified him of the presentation of the complaint and of the reasons that prompted the Costa Rican Government to bring that action.

In the reply alluded to, the Nicaraguan Chancellor stated, among other things, that his Government, in entering into the treaty with the United States, had confined itself exclusively to the territorial limits of Nicaragua that belonged to her as an independent state, seeking only to promote her welfare and progress and respecting in all ways the integrity and legitimate rights of the other Central American Republics;

That Nicaragua had been at all times perfectly qualified to enter into contracts of the character of the Chamorro-Bryan Treaty, and that she was by no means disposed to consent to a discussion of private rights pertaining to the inherent sovereignty of the state;

That with respect to Costa Rica all questions that had been rife with Nicaragua at other periods relating to the frontier and to participation in the interoceanic canal had been decided once and forever by the award of President Cleveland;

That Nicaragua had strictly complied with that award, as she stood ready to do when the time should come for granting concessions for the construction of the interoceanic canal; but that, with respect to the rights which that award insured to Nicaragua as sole sovereign over the territory in which said canal was to be constructed, and as absolute owner of the benefits that she might derive in compensation for the favors and privileges to be conceded by her Government, she would not permit them to be made the subject of judicial determination, since the award, by its very nature, is not subject to revision or interpretation by any arbitral tribunal;

That the Central American Court of Justice was not competent to admit such a complaint as the one brought before it by the Government of Costa Rica, because, according to Article I of the Convention of Washington creating that Court, it could only be clothed with the character of an arbitral tribunal having jurisdiction over controversies or questions arising between the signatory parties when their respective chancelleries are unable to reach a settlement, and when, in conformity with the article cited, resort to that Court alone remains, in cases in which any settlement between the parties has become impossible after the failure of the requisite courses of diplomacy;

That the Costa Rican Secretary of Foreign Relations has at no time expressed to the Nicaraguan Foreign Office, either directly or indirectly, a single thought that would reveal his Government's opposition to the conclusion of the Bryan-Chamorro Treaty;

That for these reasons the Government of Nicaragua considers the complaint presented to be futile and outside the competency of the Central American Court of Justice, and, in the full security of its rights, believes it can count on complete concurrence in this viewpoint by the Court and on the refusal of that tribunal to entertain the proceeding; and—

That, since consideration of the action by the Central American Court of Justice would be without effect and a violation of the Convention of Washington of 1907, the Government of Nicaragua trusts that the Court will adhere to the clear, explicit, and positive letter of that pact and withhold its consideration of the case.

Section II

In its telegram dated the 28th of April of the present year, the Nicaraguan Chancellery transmitted to this Court a copy of its reply to another dispatch from the Costa Rican Chancellery. In that reply it confirmed and amplified the arguments contained in the document referred to in the preceding paragraphs, and added that Costa Rica prays the Central American Court of Justice to declare the legal incapacity of Nicaragua to enter into conventions of the nature of that which was signed on the 5th of August, 1914, between the latter Republic and the United States of America;

That on this point the Government of Nicaragua hastens to declare again that Nicaragua not only has always been, and will always be, possessed of full legal capacity to enter into and fulfill conventions of this character, but holds as offensive to her dignity as a free and independent nation any discussion of acts pertaining to her sovereignty — acts which in no case could become the subject of arbitrament;

That, with respect to the Cleveland Award, as to the interpretation of which Costa Rica believes differences exist that should be taken into account by the Central American Court in order to determine which of the two Governments is right, the Nicaraguan Chancellery asserts that that award, having once and forever resolved the differences that formerly existed between the two countries in relation to frontiers and to participation in the interoceanic canal, precludes absolutely and by its very nature the claim that it is subject to interpretation by any tribunal whatsoever, for if arbitral awards could be the subject of revision at the will of either of the parties, a decision of that kind could never be definitive in character and conflicts between nations would never end;

That the power possessed in certain cases by the Central American Court of Justice to act as an arbitral tribunal is confined expressly to those questions which may arise between states from and after the date on which the organic convention went into force among the contracting parties, but that under no conception could that power, even by violating the letter and spirit of the compact, extend to matters decided prior to the conclusion of that organic convention;

That, on the other hand, there has been no disagreement between the two Governments respecting the manner of interpreting the award of President Cleveland; and that, supposing the Costa Rican

Government should come to have doubts as to the validity and scope of that arbitral decision, this Court would not, in any case, be the forum charged with its interpretation, nor would those doubts affect the Chamorro-Bryan Treaty, which is wholly foreign to the matter;

And, finally, that for these reasons the complaint is wholly unreasonable and groundless, and that, in view of the foregoing, and of the points set forth in the telegram of April 1, the Central American Court of Justice should reject the complaint presented by the Government of Costa Rica; otherwise, it would flagrantly violate the convention that gave it life and its action in the case would be an absolute nullity.

SECTION III

Upon the return of the justice from Nicaragua, the Court regained its legal quorum on the 24th of April, and at its session of the 1st of May, following, took under consideration the complaint presented, which complaint contains the following elements set forth in two parts in Chapters I and II of this decision.

FIRST PART

CHAPTER I

ARGUMENTS OF FACT

It appears:

That the representative of the high party complainant has set forth in his complaint the following arguments of fact:

SECTION I

That in the beginning of April, 1913, his Government learned, through private sources, that the Legislative Assembly of Nicaragua had just given its approval, in secret session, to a treaty (also covered by secrecy) that had been concluded between the Government of the Republic of Nicaragua and the Government of the United States of America, among other things, for the opening of an interoceanic canal through Nicaraguan territory. That this news, the first it had received on the subject, moved the Costa Rican Government to instruct its Minister in Nicaragua to present to the Government of that Republic a formal diplomatic protest against the execution of the canal pact referred to, on the ground that the Government of Costa Rica conceived, and would continue to conceive, such an act to constitute a flagrant violation of existing treaties between the two countries and of the Cleveland Award.

SECTION II

That at the same time that that diplomatic protest was being made, the Costa Rican plenipotentiary at Washington, following instructions from his Government, brought before the Government of the United States of America a similar diplomatic protest against the conclusion, on the part of Nicaragua, of the canal convention above mentioned, setting forth, as was done in the protest before the Nicaraguan Government, the conviction that the pact could only, at best, be held to be a nullity if account were taken of Nicaragua's legal incapacity to negotiate in the premises because of her failure previously to consult the opinion of Costa Rica regarding those negotiations and even to ask her acquiescence in the matter.

SECTION III

That His Excellency the Nicaraguan Minister of Foreign Relations, in his note of June 12, 1913, replied to the protest of the Costa Rican Minister, informing him that "the Government of Nicaragua exercised a right of incontestable sovereignty when it entered into the convention of February 8, 1913, with the United States, which convention has been kept secret for reasons of an international character that affect not it alone; but declares in the most positive manner that, in entering into that pact, it has not ignored any right that belongs to Costa Rica; nor has it committed any violation of the treaties existing between the two nations"; that "that convention . . tends towards procuring, as far as possible, the construction of an interoceanic canal through a route exclusively Nicaraguan"; that the convention "merely deals with a preferential right, granted to the United States, to open an interoceanic passageway through a route to be designated out of national territory when it shall be decided, by agreement between the two Governments, to undertake the construction thereof, at which time the conditions under which the canal shall be constructed, operated, and maintained will be determined by a further treaty or convention between the contracting parties"; that "therefore, dealing with a simple option for a canal concession, Nicaragua, as sole sovereign over the territory that will be the site of the great undertaking, is wholly within her incontestable rights in entering singly and alone into that engagement"; and that "in view of the foregoing, . . . the ideas expressed in the note to which this is an answer are in every regard unreasonable, for, as has been shown by an abundance of reasons and arguments, when the convention in question was entered into there was on the part of Nicaragua no violation of existing treaties nor discourtesy to Costa Rica, nor any disregard or forgetfulness of her legitimate rights."

SECTION IV

That *La Republica*, an independent newspaper of this city, in its issue No. 8810 of July 4, 1913, published the text of the treaty which, according to that paper, had been signed by the Governments of Nicaragua and the United States of America, relating to the opening of the canal just referred to; and that, although the Government of Costa Rica did not attribute authenticity to the publication, it desires to make known the fact that Nicaragua, who was aware of the publication, did not disavow it either through the press or otherwise; and that *La Republica* was a journal violently opposed to the Government of Costa Rica.

That the Minister of Costa Rica in Nicaragua, in obedience to the instructions of his Government, placed in the hands of the Nicaraguan Government a copy of the issue of the newspaper referred to, together with a note in which he requested to be informed "categorically whether the text of said convention as therein published is authentic, as well generally as in each of its paragraphs, and, if not, that you make the appropriate corrections."

That His Excellency the Nicaraguan Secretary of Foreign Relations, in his note of August 4, 1913, replied to the communication of the Costa Rican Minister, informing him, "in confirmation of the statements contained in my note of the 12th of last June, that for considerations of an international character that involve not alone my own Government, the latter is keeping secret the convention entered into with the United States on the 8th of last February; and that, since it relates to a pact not yet perfected, it is not proper for the Government of Nicaragua, on its part, for the reasons contained in its said note, to make any official declaration regarding any of the steps in such negotiations."

Section V

That later, through the medium of the North American press, and not officially, his Government learned that the Senate of that country was considering a treaty which the Costa Rican Government assumed was the same that had been reproduced in the newspaper *La República*, to which reference has already been made, and the same alluded to by His Excellency the Nicaraguan Secretary of Foreign Relations, in his notes of June 12 and August 4, 1913, as having been signed by the Governments of Nicaragua and the United States of America, relating to the opening of a canal through Nicaraguan territory, and to other matters then unimportant to his Government; and his Government also learned of certain steps undertaken by private individuals, interested in behalf of Costa Rica, before different Senators, to the end that when the treaty should be debated in the Senate and the treaty ratified, the rights of that country in relation to the construction of any interoceanic canal should not only not be lost sight of but should be respected and guaranteed.

Section VI

That, unofficially, towards the middle of August, 1914, the Government of Costa Rica was assured that the treaty for a canal across Nicaragua had been in fact tacitly withdrawn from consideration by the Senate of the United States of America, but that that body had before it at the time another pact similar in groundwork at least (if not identical) as to a canal across Nicaragua and negotiated by the same high contracting parties that had concluded the first, that is, the one bearing date of February 8, 1913; but that the Government of Costa Rica received no official notice of the new pact, nor advices respecting the signature and contents of the other agreement; nor was it informed respecting the then status of the negotiations in progress, because these were consummated in the strictest secrecy, as well on the part of the United States of North America as on the part of Nicaragua.

SECTION VII

That for these reasons the Government of Costa Rica was unable to formulate exact objections against the treaty of February 8, 1913, relating to an interoceanic canal across Nicaraguan territory; nor could it attack, except in the most general way, *any analogous compact* entered into later by the same parties, for, against the solemn and explicit promises of Nicaragua, her first care on that occasion was to conceal at all hazards from Costa Rica her negotiations relating to the canal.

SECTION VIII

That the balance of the year 1914 and all of 1915 passed without action by the North American Senate in the matter of the Nicaraguan canal, or at least, the Government of Costa Rica never heard anything to the contrary; and that while Costa Rica's mind was at rest on the subject, the *Evening Star* of February 2, of the present year, announced that the Committee on Foreign Relations of the North American Senate had recommended to that body the ratification of the treaty that had been concluded more than a year before by the Government of the United States with the Government of Nicaragua, among other objects, for the construction of an interoceanic canal through Nicaraguan territory.

SECTION IX

That on reading the advices published in the Washington *Star*, the Costa Rican Legation at Washington hastened to dispatch to the State Department of North America a carefully thought out note in which the Government of the latter country was appealed to to prevent the ratification by the Senate of the pact in question, on the ground that it was openly opposed to existing treaties between Costa Rica and Nicaragua, to the Cleveland Award, and to the harmonious sentiments that animated His Excellency the Chief Executive of the United States towards all the peoples of the Americas according to the then recent public and official declarations that had been made by him before over a thousand delegates from different nations that make up the American continent; and that with the same object in view the attorney for the Costa Rican Legation at Washington, Harry W. Van Dyke, Esquire, published a memorandum addressed to the American Senate; but that effort failed as did the efforts of Costa Rica's Diplomatic Representative at Washington, for the *Congressional Record* of the 18th of February of that year recorded the news that the United States Senate, in executive session of the same day, had ratified a convention between the said Republic and that of Nicaragua, which had been subscribed at Washington on the 5th of August, 1914, and which, with additions adopted by that body, as translated into Spanish by the personal attorney of Costa Rica (because it has been impossible for that Government to secure a copy of the original Spanish text), reads as follows:

> The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere coöperation for all purposes of their mutual advantage and interest and to provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the interests of both countries, and the Government of Nicaragua wishing to facilitate in every way possible the successful maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a convention to these ends, and have accordingly appointed as their plenipotentiaries:
>
> The President of the United States, the Hon. William Jennings Bryan, Secretary of State; and
>
> The President of Nicaragua, Señor General Don Emiliano Chamorro, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States:
>
> Who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:
>
> ARTICLE I. The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and convenient for the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated, and maintained to be agreed to by the two Governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.
>
> ART. II. To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of 99 years to the Government of the United States, the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of 99 years the right to establish, operate, and

maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of 99 years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

ART. III. In consideration of the foregoing stipulation and for the purposes contemplated by this convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this convention, pay for the benefit of the Republic of Nicaragua the sum of $3,000,000 United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

ART. IV. This convention shall be ratified by the high contracting parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year 1914.

WILLIAM JENNINGS BRYAN. [SEAL.]
EMILIANO CHAMORRO. [SEAL.]

SECTION X

That as soon as the ratification of the Bryan-Chamorro Treaty by the United States Senate appeared in the *Congressional Record*, the Costa Rican Legation at Washington gave careful study to the document, and, having become convinced that its contents were notoriously contradictory of the unquestionable rights of Costa Rica established in the Cañas-Jeres Treaty, the Cleveland Award and the Central American Treaty of Washington, hastened to lay before the North American Foreign Office, under date of the 21st of February, of the present year, a protest, respectful but vigorous, against the action of the Senate — the only step which, at the moment, could have been taken by a country possessed of no forces or defense but the law.

That even up to this time, although the matter is no longer a secret of state, Nicaragua has not deigned to make any communication to Costa Rica concerning the great problem. Meanwhile His Excellency, the United States Minister Plenipotentiary in Costa Rica, did have the goodness, under instructions from his Government, to send to the Costa Rican Secretary of Foreign Relations a courteous note, in which, supposing evidently that Costa Rica was fully informed concerning all that had taken place, he advised him that the United States Senate, on the 18th of that month, had, by a vote of 55 to 18, consented to the ratification of the Nicaraguan Canal Treaty, and had made two amendments, copy of which he enclosed, together with copy of a resolution of the Senate that reads as follows:

> *Provided*, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said convention in the fear or belief that said convention might in some respect impair existing rights of said states, therefore it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended, such advice and consent are given with the understanding to be expressed as part of the instrument of ratification that nothing in said convention is intended to affect any existing rights of any of the said named states.

The complaint adds that at the moment of receiving that communication from His Excellency the American Minister, the Government of Costa Rica was completely in the dark as to the language of the treaty in question.

CHAPTER II

LEGAL BASES

It appears:

That the high party complainant relies for support of its action upon the following legal antecedents:

SECTION I

The treaty of limits entered into between Costa Rica and Nicaragua on the 15th of April, 1858, and known as the Cañas-Jerez Treaty, stipulates in its conducive part as follows:

> ART. 6. The Republic of Nicaragua shall have exclusive dominion and the highest sovereignty over the waters of the San Juan River from their issue out of

> the lake to their discharge into the Atlantic; but the Republic of Costa Rica shall have in those waters perpetual rights of free navigation from the said mouth of the river up to a point three English miles below Castillo Viejo, for purposes of commerce, whether with Nicaragua or with the interior of Costa Rica, over the San Carlos or Sarapiqui rivers or any other course starting from the part which has been established as belonging to that republic on the banks of the San Juan. The vessels of either country may touch at any part of the banks of the river where the navigation is common without paying any dues except such as may be established by agreement between the two Governments.
>
> . . . .
>
> ART. 8. If the contracts for canalization or transit entered into before the Nicaraguan Government had knowledge of this convention should for any cause cease to be in force, Nicaragua agrees not to conclude any others relating to the objects above stated without first hearing the opinion of the Costa Rican Government respecting the disadvantages that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory.

SECTION II

By the Esquivel-Román Convention, entered into by Costa Rica and Nicaragua on the 24th of December, 1886, both Republics submitted to the unappealable arbitral decision of His Excellency, the President of the United States of America, the question that had long been rife between the two Republics above mentioned concerning the validity of the Cañas-Jeres Boundery Treaty, Article VII of which first-named treaty provides as follows:

> The arbitral award, whatever it may be, shall be held by the contracting parties to be a perfect and obligatory treaty, it shall admit of no recourse whatsoever and its execution shall commence thirty days after having been notified to the two Governments or their representatives.

SECTION III

The Cleveland Award rendered on the 22d of March, 1888, as the outgrowth of the agreement contained in the Esquivel-Román Convention contains the following definite findings respecting the Cañas-Jeres Treaty of Limits and especially respecting the two articles transcribed from that pact:

> *First.* The above-mentioned Treaty of Limits, signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.
>
> *Second.* The Republic of Costa Rica under said treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the River

San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment.

Third. With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua, I decide as follows:

. . . .

10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for interoceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concession she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

SECTION IV

That the Cañas-Jerez Treaty (the Treaty of Limits) has preserved its full obligatory force and effect down to the present day, as well by virtue of the categorical holdings in the Cleveland Award, which are set forth in the complaint, as by virtue of the permanent character of its stipulations. Wherefore, in the absence of mutual consent by the contracting parties, the treaty cannot be lawfully denounced or held to be dead, nor can the agreements therein stipulated be avoided so long as Costa Rica and Nicaragua continue as free nations, and this chiefly because the force and validity of that pact has been recognized and proclaimed absolutely and without restriction as to any fixed or determined period by the arbitral decision of one of the most honorable and most influential chiefs of state in the entire world.

That it therefore seems inexplicable to his Government that Nicaragua should have negotiated in relation to a canal through its territory unmindful of Costa Rica, and with the very nation whose Government, as such, and by the choice of both contending parties, rendered the award which, in harmony with the Cañas-Jeres Treaty, incapacitated it from proceeding in the matter without obtaining the consultative, indeed the *decisive*, opinion, of the Republic of Costa Rica.

Because it would seem to be impossible to the Government he represents that a third Government should construct a navigation canal by way of the San Juan River without infringing by the operations, or indirectly as a result thereof, the contractual and natural rights of Costa Rica which had been fixed by the Cañas-Jeres Treaty and confirmed by the Cleveland Award.

That there can be no possible doubt about the matter, for if the United States of America, or an assignee of her rights, should adopt for the canal the San Juan River route, it is obvious that the United States and Nicaragua, not having made any express reservations whatsoever that would guarantee to Costa Rica the enjoyment of advantages conferred upon the latter by the Cañas-Jeres Treaty, that enjoyment must be subject, in the future, to a greater or less extent, to the good will of the United States.

That, in a word, Nicaragua has placed under the control of the United States, or sold to her, the San Juan River, unreservedly, just as though the former were the absolute owner of that stream and of its banks, and Costa Rica, who possesses the unquestionable right to navigate freely throughout the greater part of those waters, and who is the owner of the greater part of the southern banks of that river, has not been taken into account.

SECTION V

That Article IX of the General Treaty of Peace and Amity, concluded the 20th of December, 1907, between the five Republics that formerly constituted the Federal Republic of the Center of America, contained the following stipulation:

> The merchant ships of the signatory countries shall be considered upon the sea, along the coasts, and in the ports of said countries as national vessels, they shall enjoy the same exceptions, immunities, and concessions as the latter, and shall not pay other dues nor be subject to further taxes than those imposed upon and paid by the vessels of the country.

It is evident, then, says the complainant, that in matters relating to navigation, any prior treaty or convention that Nicaragua may have signed, or may sign in the future, which neglects to reserve to merchant vessels of Costa Rica, Salvador, Guatamela and Honduras, plying her waters, privileges and advantages identical with those enjoyed by her own vessels, openly violates the article above quoted from the Treaty of Peace and Amity.

That the treaty and conventions of Washington of 1907 having furthermore been conceived, debated and concluded through the friendly intervention of the Government of the United States of America, those pacts carry with them the moral guaranty of that great Republic.

CHAPTER III

ALLEGATIONS OF THE HIGH PARTY COMPLAINANT

It appears:

That the attorney for the high party complainant, analyzing the bases of fact and law on which he relies to support the action he has brought, conceives the present legal situation of Costa Rica and Nicaragua to be the following:

From the examination and comparison of the Bryan-Chamorro Treaty with the Cañas-Jerez Treaty and the Cleveland Award, he says, it is apparent that the first is frankly repugnant to the others in the following points:

(a) *Navigation of the San Juan River*

The Cañas-Jerez Treaty, explained by the Cleveland Award, concedes to Costa Rica the perpetual right to free navigation in the waters of the San Juan River from its outlet in the Atlantic up to a point within three English miles of Castillo Viejo, for the purposes of commerce, whether with Nicaragua or the interior of Costa Rica, through any of the waterways of that country that flow or may flow into the San Juan; it also gives to Costa Rican vessels the right, exempt from imposts of any class, to touch at points on the Nicaragua banks of that river along the part thereof in which navigation is common, and puts Costa Rican vessels of the revenue service on the same footing with the merchant vessels of the same country (Costa Rica) in order that they may protect its rights or for the said purposes of commerce.

That, with regard to the San Juan River, the conventional rights of Costa Rica are, in a certain aspect, less than the corresponding rights of co-ownership (*condominio*): Costa Rica, for example, cannot ply that stream with war vessels as, of course, Nicaragua can do; but, on the other hand, those rights are greater than those of a mere co-owner (*copropietario*) because the Costa Rican vessels, as well merchantmen as revenue cutters, in the zone in which navigation is common, have a free course over the whole river, throughout its length and breadth, and free access, exempt from imposts, to any point on the Nicaraguan shore.

That, if the United States, under the authority of the Bryan-Chamorro Treaty, should construct the interoceanic canal over the San Juan River route — the absolute ownership of which has been unreservedly ceded to her by Nicaragua — it is easy to imagine the destiny in store for Costa Rica's rights to navigation of the San Juan River.

That, this being the case, Nicaragua forgot completely, in executing the treaty, that she could not dispose unrestrictedly of the San Juan River because in and to that gift of nature Costa Rica also possesses perfectly clear rights of a practical importance perhaps equal to that of Nicaragua's rights; this all the more so since she sought to cancel them absolutely by means of a conveyance that is a nullity in every aspect, in so far as it covers the rights of a third party — Costa Rica. A sale of a thing that does not belong to the seller is null. This is an eternal axiom of law, and, it may be said, of organic justice, among all peoples who hold themselves to be civilized.

That the canal, looking at the matter from another viewpoint, would result, in fact, in causing a dimunition of Costa Rican territory that today reaches in reality, in a certain sense, from the Nicaraguan bank of the San Jaun River, from a point three English miles below Castillo Viejo, following the current, as far as the Atlantic Ocean; and that, notwithstanding this, Costa Rica's opinion has not even been consulted in the matter.

(b) *Costa Rica's Assent*

That by virtue of the Cañas-Jeres Treaty and the Cleveland Award, Costa Rica has a *consultative* voice which Nicaragua *must* invoke in order to enter into any agreement that purposes to carry through a project for the construction of a canal on her soil; but that, if by the undertaking the natural rights of Costa Rica should be injured, that voice ceases to be consultative and becomes converted into a *decisive* voice. That is to say, he adds, if the work should portend any injury to Costa Rica, the latter must be brought in as a *party* to the undertaking.

That, even had there been no Cañas-Jeres Treaty or Cleveland Award, the last-stated conclusion would stand, since it is no more than a maxim of equity; but that this time Nicaragua was entirely led astray, and that in spite of the protests of Costa Rica, and against them, she permitted herself to contract alone with the United States in a canal project, thereby unquestionably trampling upon the rights of Costa Rica, which she more than any other was under obligation to safeguard.

That Nicaragua did not even invoke Costa Rica's consultative voice, which was mandatory in this emergency, and that the canal convention, which was guarded so carefully and for so long a time kept secret by the United States and Nicaragua, being now known in all its details, Costa Rica cannot remain quiet and speechless, because that pact, from the moment in which it virtually attacks her rights of navigation of the San Juan River and the integrity of her national territory in that direction, cannot pass unnoticed by Costa Rica, who, armed with her right, maintains that that convention cannot be a law to any party without her acquiescence in such clauses as gravely menace her interests.

(c) *Navigation of Nicaragua's Maritime Waters*

That the Central American Treaty of Washington provides that the merchant vessels of any of the signatory nations shall have equal rights with the national vessels of each of the other contracting parties when in another's seas, coasts, or ports.

That Nicaragua thus limited, in favor of her sisters of the former Federation of the Center of America — as they in their turn did for her benefit — her enjoyment of her maritime waters, coasts, and ports, for the period of ten years, which period has not yet elapsed and which is prorogable indefinitely from year to year.

That in consequence Nicaragua had not the power to give to the United States for a term of years a valid conveyance of any part of her littoral and waters in the Gulf of Fonseca and of her Corn Islands in the Caribbean Sea, without the obligation stipulated in Article IX of the Treaty of Washington; nor could she kill the said treaty in fact without the concurrence of the will of the other contracting parties.

That an impediment of equal force exists to the sale of the territory that may be occupied or needed by the interoceanic canal whilst that section covers parts of Nicaraguan land or water affected by the Central American Treaty of Washington, since *no one can transfer more rights than he has nor those that he does not possess.*

That by Article IV of the Cañas-Jerez Treaty, Salinas Bay on the Pacific Ocean, and the Bay of San Juan del Norte in the Atlantic, are common to Costa Rica and Nicaragua; and that, in consequence, if the United States should elect the two bays mentioned as the heads or entrances of her canal, the rights of Costa Rica in those bays would vanish down the horizon of history unless right and justice should retain their sway over the conscience of the North American people.

That from the foregoing it is indisputable that in all that relates to a canal across her territory, and, in general, in what concerns the navigation of her waters, Nicaragua's sovereignty is limited by the treaties and conventions cited, which pacts necessarily modify her personality and restrict it within the limits prescribed by her solemn agreements.

That the complainant refrains from specially invoking any principles of international law because of the fact that, Costa Rica's rights being based upon perfect contracts signed with and by Nicaragua, it is to those instruments alone that she must have recourse for the solution of the difference that has arisen, for the contract is the supreme law between the parties whether they be simple individuals or collective political entities. That the case now before the

Court is one of pure civil law, and the legislation of Nicaragua as well as that of Costa Rica and all nations on the globe recognize the commanding status of the contract as the legal bond between the parties. That as between states, the contract is something more than an obligatory tie: "respect for what has been agreed upon, and the faithful fulfillment thereof, are the cornerstones of national honor and there is no defense effective enough to justify an evasion of that canon."

CHAPTER IV

COMPLAINT AND EVIDENCE

It appears:

That with the complaint, the contents of which have been set forth, the attorney for the high party complainant files duly legalized copies of the following documents:

A. — Attorney's credentials.
B. — Cañas-Jerez Treaty.
C. — Esquivel-Román Convention.
CH. — The Cleveland Award.
D. — General Treaty of Peace and Friendship between the Republics of Central America.
E. — Convention creating the Central American Court of Justice.
F. — Costa Rica's protest lodged with Nicaragua on the 27th of April, 1913.
G. — Costa Rica's protest lodged with the United States on the 17th of April, 1913.
H. — Nicaragua's reply of June 12, 1913.
I. — Inquiry addressed by Costa Rica to Nicaragua July 30, 1913.
J. — Nicaragua's reply of August 4, following.
K. — Report on the Foreign Relations of Nicaragua, 1914.
L. — *La República*, No. 8810, containing Chamorro-Weitzel Treaty signed at Managua, February 8, 1913.
LL. — Statement of Mr. John N. Popham before the Committee on Foreign Relations of the United States Senate.
M. — Costa Rica's note of February 2, 1916, to the United States.

N. — Memorandum of Harry W. Van Dyke, Esquire, before the United States Senate.

M. — *Congressional Record*, No. 49, of Washington, containing Senate resolution ratifying Bryan-Chamorro Treaty.

O. — Costa Rica's protest of February 21, 1916, lodged with the United States.

P. — Note of same day from the United States Legation at San José de Costa Rica to the Costa Rican Government.

Q. — The Cleveland Award (same as appendix CH).

R. — Reply of the United States to the protests of Costa Rica.

And, after invoking Article 1st of the *General Treaty of Peace and Amity and of the Convention for the establishment of a Central American Court of Justice*, concluded on the 20th of December, 1907, by the five Central American Republics, for the purpose of showing the jurisdiction of this Court, the attorney for the high party complainant, for the reasons set forth in his complaint, and the resources of diplomacy having been exhausted, prays this Court to render final judgment after due legal procedure in this action which he has brought against the Government of the Nicaraguan Republic, as follows:

First. — That the Bryan-Chamorro Treaty, to which paragraph 15 of the foregoing arguments of fact relates, violates the rights of Costa Rica that were acquired under the Cañas-Jerez Treaty, the Cleveland Award, and the Central American Treaty of Washington, in that —

(*a*) Costa Rica was not consulted by Nicaragua in order to enter into that convention;

(*b*) The execution of that pact may deprive Costa Rica of her rights of free navigation in the San Juan River from its outlet in the Atlantic, up stream to within three English miles of Castillo Viejo, and may prevent Costa Rican vessels in the merchant or fiscal service from touching at points on the northern banks of that river along the line indicated;

(*c*) The execution of the pact may also damage and diminish the Costa Rican shores of the said river along that line, as well as the mouths of the Costa Rican rivers that empty into the San Juan, and the lands about said shores and river mouths;

(*d*) The execution of the pact may also prejudice the co-ownership of Costa Rica in San Juan del Norte Bay and Salinas Bay, and may nullify that co-ownership entirely;

(*e*) Because of the potential injuries indicated in (*b*), (*c*), and (*d*) the decisive opinion of Costa Rica is necessary and indispensable to the perfecting of the pact, and that opinion has neither been given or asked for; and (*f*) The pact, with regard to the leasing to the United States of Nicaraguan territory for a naval base in the Gulf of Fonseca, and of Great Corn Island and Little Corn Island which Nicaragua possesses in the Caribbean Sea, makes no reservation whatever in favor of Costa Rica, whose vessels possess, in all the maritime waters, coasts and ports of Nicaragua, the right to be treated as national vessels of Nicaragua — an omission which *ipso facto* renders nugatory Article IX of the Central American Treaty of Washington.

Second. — That the violation of Costa Rica's rights in the particulars above set forth, or in any one of them, renders the said Bryan-Chamorro pact void, particularly in view of the fact that when it was signed both contracting parties well knew of Nicaragua's lack of legal capacity to sign unrestrictedly; that is, they knew of Nicaragua's incapacity to sign without holding harmless the rights which Costa Rica possesses in the waters and territories that are involved in the convention, and

Third. — That the acts and omissions set forth in the two preceding points render the said Bryan-Chamorro Treaty null and void and without effect, especially with respect to Costa Rica, and that the Court declare and adjudge said treaty to be null and void and without effect.

Finally, in an interlocutory petition, complainant's attorney prays the Court that, under the authority of Article XVIII of the convention creating this tribunal, in order to prevent damages and conflicts that may perhaps be irreparable later, and pending the final decision in the case, the Court will issue an appropriate decree —

(*A*) Ordering, with relation to a canal across Nicaraguan territory, and with relation to anything that may interfere generally with the navigation of the waters of that Republic, that the *status quo* of the right that existed in Costa Rica prior to the Bryan-Chamorro Treaty, which gives rise to this action, be maintained, and

(*B*) Directing that, in view of the urgency of the matter, a communication be sent by telegraph to the Most Excellent, the Governments of Nicaragua and the United States of America, to be followed immediately by confirmation by mail, notifying them, with all due formality, of the institution of this action and of the decree prayed for in the preceding paragraph (*A*), if, as I venture to hope, my prayer for such precautionary measure shall be acceded to.

PROCEDURE IN THE CASE AND ANSWER OF THE HIGH PARTY DEFENDANT

It appears:

That this Court, in an act signed herein on the 1st day of May, 1916, recognized the Licentiate don Luís Castro Ureña as the representative of the complainant Government, admitted the complaint presented, notified the Nicaraguan Government and called upon it to answer the complaint within sixty days from the date of notification, ordered that copies of the complaint, evidence, and of the interlocutory act of this Court be also sent, by note, to that Government, decreed the precautionary measure (*medida precautoria*) asked for, and, finally, ordered that this act be notified to the defendant Government and the other signatories of the treaty creating this Court.

It appears:

That the Government of Nicaragua, not having answered the complaint within the term prescribed, the Court, by its act of August 16, last, granted an extension of twenty days as provided in Article XV of the organic convention.

It appears:

That on the 25th of the same month of August, the Court received an official communication dated the 1st of that month, from the Minister of Foreign Relations of Nicaragua, setting forth the following:

That, in acknowledgment of the notification ordered by the Central American Court of Justice in its act of May 1 last, to be given to the Government of Nicaragua, calling upon the latter to answer the complaint brought on the 24th of March by the Government of Costa Rica relating to the conclusion of the Chamorro-Bryan Convention for an option to contract for the opening of an interoceanic canal, the following is submitted:

That the statements contained in the introduction to the complaint have caused much surprise to his Government, for it would seem that they were only made to mislead public opinion by juggling with the meaning of words or distorting the groundwork of facts to conceal the truth.

That after the opening of the complaint, one reads that the Republic of Costa Rica, in the action against the Government of Nicaragua, is brought before the Central American Court of Justice on the grounds that a convention was concluded by the latter with the Republic of the United States *for the sale of the San Juan River and other purposes.* That the language in the convention is clear and explicit: absolutely nothing, the Minister says, refers to a sale; an option only is stipulated for the conclusion of a treaty at the appropriate time.

That it is impossible even to know where and when it will be arranged to build the canal — whether it will be built on the Costa Rican frontier or over some other course distant therefrom.

That when the matter shall have been studied, and all the advantages discussed and weighed in order to select, locate, and construct the waterway, then, and then only, can we proceed to enter into the canal treaty or contract.

That, meanwhile, the idea of a sale of the San Juan River, attributed to the Chamorro-Bryan Convention, is without foundation, and is, furthermore, offensive and harmful.

That, wishing to be understood by the foregoing as implying nothing more than a demonstration of courtesy towards this Court, he is constrained also to express the surprise of his Government in noting that the Central American Court of Justice should have admitted the complaint, the incompetency of the Court being so manifest, as he then undertakes to show: The convention that created the Court, he said, is a fundamental code. It cannot be ignored, and the Court must subject itself to the provisions of that convention or its proceedings will be null and void. That in the present case the question must first be asked, "What is the basis of the complaint, what gives rise to the action?" Is it the Chamorro-Weitzel Treaty or the Chamorro-Bryan [Treaty]? The first pact never went into effect, and, therefore, must be dismissed from the discussion; had it given occasion for a complaint based on an allegation by Costa Rica that it violated her rights — and this the Nicaraguan Government does not admit — that treaty stands in the category of an instrument of no value and, therefore, cannot be made the subject of consideration.

That the complaint, then can only have been inspired by the Chamorro-Bryan Treaty; but that with respect to that pact, the party complainant confesses that it had not initiated, much less pursued and brought to an end, any steps through diplomatic channels. How, then, he continues, could it be said that it was impossible to reach a settlement between the Foreign Offices of the two countries if not a single effort thereto was made — a requisite *sine qua non* (Article 1 of the convention) — so that the claim could be established, once tentative diplomatic negotiations had been exhausted?

That this being so, it is idle to attempt deductions, since they could be based only on conjecture. The truth of the allegations of fact must be demonstrated by *acts* or other classes of authentic documents (Article XVII of the Rules of the Court); it is useless to say that the complaint relates to a similar convention. The rules prescribed under the authority of a treaty require proofs, not mere pretext that may be availed of by one party to elude the obligation imposed. That as those proofs do not exist, nothing has been adduced to establish the competency of the Central American Court of Justice. That tribunal cannot hold itself above the constituted law; it bears no legal mission in this affair.

That, even on the supposition that the Chamorro-Bryan Treaty were not similar, but identical, in language with the Chamorro-Weitzel pact, the latter not having had any legal existence, is relegated to the category of a mere rejected project, and so true is this that it can be stated in all veraciousness that the effects produced with respect to Nicaragua and the United States by the Chamorro-Bryan pact arose or sprang into being from the exchange of ratifications of the latter. That, consequently, what should be, and must be, proven is that which has relation to the Chamorro-Bryan Treaty.

That the Central American Court of Justice could not, and cannot, legally prescind from that legal requirement without overstepping its powers, or, what amounts to the same thing, without bringing about the absolute nullity of all its acts; and that everything it shall decide, if it should reach the stage of decision, will be absolutely null and void for want of jurisdiction.

His Excellency the Nicaraguan Minister of Foreign Relations then refutes the votes of four of the members of the tribunal that were cast for the admission of the complaint; and afterwards he alleged that the other important element that must be considered in this matter — and this throws into bold relief the incompetency of the Central American Court of Justice to take cognisance of the complaint — is that which is prayed in the complaint itself: "That therein, as though it were a matter that arose out of the relations between two states signatory to the convention that created this Court, the Court is requested to render a decision in a matter which in no way, and in none of its points, could be submitted to its cognisance." "We bid you enter," says the party complainant to the Central American Court of Justice, "we bid you enter upon a forbidden road which no one has opened to you; plunge your scythe into another's wheat; break an agreement signed by one who has entrusted to you no mission to take cognisance of his affairs." This and nothing else, he says, is what is asked when a decision in the following terms is prayed for:

> That the violation of the rights of Costa Rica in the particulars heretofore imputed, or by any one of them considered by itself alone, nullifies the said Chamorro-Bryan pact, particularly because both contracting parties knew of Nicaragua's relative incapacity to execute the pact without restrictions — that is, without safeguarding the rights Costa Rica possesses in the waters and lands involved in the convention.

That, even limiting the viewpoint to the simple approval of a treaty by the Nicaraguan Congress — an approval given under the authority of the powers conferred upon that body by the political constitution — such pact could not come under the jurisdiction of the Central American Court, and even less a decision as to the validity of that act, emanating as it did from a governmental power exercising the sovereignty of the Republic. That the hypothesis might perhaps be admitted that sometimes the right exists to complain because of a violation, or for damages, or on some similar ground, but never could the legal impossibility of nullification of sovereignty be asked, much less the nullification of those acts in which a third high contracting party participates.

After other observations relating to this point, His Excellency the Nicaraguan Minister of Foreign Relations sets forth that his "Government believes, and, through him, so declares, that it is under no obligation to reply to the complaint of the Costa Rican Government because it cannot admit, even conditionally, the competency of the Court to take cognisance of, and to decide, that complaint."

He sets up the incompetency and utter lack of the Central American Court of justice, as the sole point that is to be determined in the final decision, and continues: "That not for a moment could Nicaragua consider — except for the purpose of rejecting them — the baseless statements, nor the proceeding attacking her sovereignty and dignity." And finally, "that if the Court insists upon taking cognizance of the cause in violation of the provisions of the General Treaty of Peace and Amity and the convention that brought it into existence, the Government of Nicaragua protests in most solemn manner that Nicaragua has proceeded within her rights, that the Central American Court is without jurisdiction, and, in the event of a decision adverse to her, Nicaragua declares that she will be unable to abide by it."

It appears:

That the Court, in view of the answer made by the Government of Nicaragua, passed an act, on the 31st of August last, in which it held as having been acknowledged, the extension of time that had been allowed for the answer to the complaint, and that consequently the new term of thirty days granted in the act of the 16th of the same month of August was extinguished; that the high party defendant having failed in its answer to designate any person or office in this city to receive notices, such notices are to be considered, with respect to the defendant, as tacitly waived in conformity with Articles 59 and 60 of the Rules of Procedure, and all notices are to be considered as effective after the expiration of forty-eight hours from the time the acts they refer to have been passed; that the cause was then ready to be taken under consideration, and that, for presenting the final arguments of the high parties, the 11th day of the present month (September) was set for the hearing.

It appears:

That the attorneys, Don Luís Castro Ureña and Don José Astúa Aguilar (the latter appointed on the 7th of the said month as representative of the Government of Costa Rica and associate counsel with the Licentiate Castro Ureña), appeared at the hearing set and submitted their arguments in support of the interests of the high party complainant. The representative, Astúa Aguilar, confined himself in his argument of the prayers of the high party complainant, to the following:

> That the indisputable rights of Costa Rica established and confirmed in the Cañas-Jerez Treaty, the Cleveland Award, and the General Treaty of Peace and Amity of Washington have been violated by the high party defendant in the Bryan-Chamorro Treaty, and that according to the text of the said conventions and arbitral award, that defendant was legally incapable of concluding that pact without the intervention and consent of my Government.

It appears:

That, at the session held by this Court on the 22d of this month, the questions submitted were fully discussed and the points contained in the questionary heretofore approved were voted upon in the manner set forth in the act passed at that session, which act reads as follows:

ACT RECORDING THE VOTES OF THE COURT IN THE CASE

The Central American Court of Justice, San José de Costa Rica, at ten o'clock on the night of the 22d of September, nineteen hundred and sixteen.

The Court, having concluded its deliberations preparatory to a final decision of the action brought by the Government of Costa Rica against the Government of Nicaragua, proceeded to take a vote on the fourteen points comprised in the questionary heretofore approved and accepted for consideration, with the following result:

First Question. — (Submitted by the high party defendant, as a peremptory exception.) Has the Court jurisdiction and is it competent?

This exception was considered notwithstanding the decision rendered herein on the 1st of May last, and all the judges answered in the affirmative.

Second Question. — In the opinion of the Court are the two diplomatic instruments known by the names of the Chamorro-Weitzel and Bryan-Chamorro Treaties two aspects of the same international transaction, the object of which is the construction of an interoceanic canal, within the purview of this proceeding?

Answered affirmatively by the Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Third Question. — Is it the opinion of the Court that both negotiations, relating to an interoceanic canal, were entered into and concluded by the Government of Nicaragua without official notice to Costa Rica?

Answered affirmatively by all of the judges.

Fourth Question. — Is it the opinion of the Court that the Government of Costa Rica pursued all reasonable efforts, through diplomatic channels, to effect an adjustment?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Fifth Question. — Is it the duty of the Court, in view of the foregoing questions and decisions thereof, to declare the competency and jurisdiction of this Court to take cognizance of the complaint?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Sixth Question. — Is it the duty of the Court to declare its competency to take cognizance of and decide this cause on the merits?

Answered affirmatively by all of the judges, Judge Gutiérrez Navas concurring, however, only in so far as that the merits relate to differences between the Government of Costa Rica and the Government of Nicaragua.

Seventh Question. — Is the Court in duty bound to declare its competency to take cognizance of, and decide, this cause notwithstanding it relates to contractual interests of a nation not subject to the jurisdiction of this Court?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Eighth Question. — Was the Government of Nicaragua, by virtue of the eighth article of the Cañas-Jerez Treaty, under the obligation to consult, in advance, the opinion of the Government of Costa Rica respecting injuries that might result to the latter in connection with the concessions contained in the Bryan-Chamorro Treaty?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Ninth Question. — In the Bryan-Chamorro Treaty does Costa Rica possess the right to be heard decisively respecting the concession for a canal by way of the San Juan River and the Great Lake Nicaragua?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas, who maintained that no evidence on this point appeared in the case.

Tenth Question. — In the Bryan-Chamorro Treaty does Costa Rica possess the right to be heard decisively respecting the canal concession in connection with any other point in Nicaraguan territory, provided the rights of Costa Rica specified in Point 10 of the Cleveland Award are not affected?

Answered negatively by all of the judges.

Eleventh Question. — Must it be taken as proven that in the said Bryan-Chamorro Treaty nothing is stipulated in protection of the rights of Costa Rica?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas, who stated that in his opinion such stipulation was not necessary since the rights of a third party, which had not taken part in the treaty, nor assented to its negotiation, could not be affected; and that his opinion is based upon the doctrine of generality set up by the text writers on international law.

Twelfth Question. — Is it the duty of the Court to hold that the Bryan-Chamorro Treaty violated Costa Rica's rights to free navigation by the cession of a naval base in Fonseca Bay, and the cession of the islands known as Great Corn Island and Little Corn Island?

The Court, in view of the fact that it has agreed to the revision of the previous decision, accepted the proposition of Judge Oreamuno to substitute for the question immediately preceding, the following:

Shall it be understood that the Bryan-Chamorro Treaty violates the rights accorded to Costa Rica by Article Nine of the Treaty of Peace and Amity, of 1907?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Thirteenth Question. — Is it, consequently, the duty of the Court to hold and decide that the treaty that gives occasion for this complaint violates provisions of the Cañas-Jerez Boundary Treaty, the Cleveland Award, and the Treaty of Peace and Amity signed at Washington in 1907?

Answered affirmatively by Judges Medal, Oreamuno, Castro Ramírez, and Bocanegra, and negatively by Judge Gutiérrez Navas.

Fourteenth Question. — Can this Court decide the prayers contained in the second and third points of the complaint?

Answered negatively by all of the judges.

The cause is, therefore, decided as follows:

First. — The Court declares itself competent to decide the complaint presented.

Second. — The Court declares that the Government of Nicaragua has violated, to the injury of Costa Rica, the rights conferred upon the latter by the Cañas-Jerez Treaty of Limits of April 15, 1858, the Cleveland Award of March 22, 1888, and the Central American Treaty of Peace and Amity of December 20, 1907.

Third. — Respecting the prayer for the nullification of the Bryan-Chamorro Treaty, contained in the complaint, this Court can make no declaration whatsoever, because of the fact that the Government of the United States of North America is not subject to the jurisdiction of this Court.

THIRD PART

EXAMINATION OF FACTS AND LAW

CHAPTER I

CONCERNING THE PEREMPTORY EXCEPTION AS TO THE JURISDICTION OF THE COURT

Whereas:

The Government of Nicaragua, in its communication of August 1, last, answering the notification of the presentation of the complaint, having interposed a peremptory exception to the jurisdiction of the Court, and having also addressed itself to that point in its telegraphic despatches of the 1st and 26th of April, and 7th and 9th of September, instant, it is the duty of the Court to analyze the fundaments of that exception and the evidence in support thereof, as well as the legal dispositions that govern the point, in order to determine whether or not this Court has the power to take cognizance of the cause.

Whereas:

It appears from the telegraphic despatches and the answer to the notification as to the complaint that the Nicaraguan Government rests its denial of the jurisdiction and competency of this Court on three grounds, to wit:

First. — That the negotiations with the Government of the United States concerning the interoceanic canal were conducted in the exercise of Nicaragua's unquestionable rights of sovereignty;

Second. — That she conducted those negotiations with a nation foreign to the jurisdiction of this Court, and

Third. — That although the Government of Costa Rica took certain diplomatic steps when the Chamorro-Weitzel Treaty was concluded — which instrument never went into effect — on the other hand it took absolutely no steps before the Nicaraguan Foreign Office in connection with the Chamorro-Bryan Treaty which gave rise to the present complaint, and that, consequently, the necessary prerequisite to the assumption of jurisdiction by this Court, prescribed by the organic convention, has not been fulfilled by the complainant Government.

Whereas:

With regard to the first of the foregoing allegations it is sufficient to observe that Article I of the convention that created this Court, and which constitutes its fundamental code, does not exclude from its cognizance any class of questions or differences that may arise between Central American states, whatever may be their origin and whatever their nature. Nothing exists to limit the jurisdiction of the Court by reason of the substance of the question in dispute, and it is, therefore, obvious that no Central American nation can exempt itself from the obligation to answer before this Court all actions brought by the other signatories to that convention, on the pretext that the injuries complained of are based upon acts performed in the exercise of sovereignty.

Whereas:

With regard to the allegation that the transaction out of which this complaint arose was concluded with a Power foreign to the jurisdiction of the Court, and that, consequently, the Court cannot decide the action brought by the Government of Costa Rica without entering a field foreign to it, and, therefore, forbidden ground, the Court is of opinion that, were that allegation sufficient to prevent the exercise of its function "to guarantee efficaciously the rights of the Central American Republics and maintain inalterably peace and harmony in their relations without being obliged to resort in any case to the employment of force"—the mission entrusted to it by the organic convention — a considerable number of controversies could arise amongst us that would have no other possible solution than through the resort to arms, and thus the most important element of finality sought to be fixed by the signatory states in instituting the Court, would be rendered nugatory. The Court can unquestionably carry out its functions without venturing upon forbidden ground, limiting itself, however, as in duty it is bound to do, to a determination of the juristic relations existing between Central American states engaged in controversy and to a declaration of the law with respect to them; but refraining absolutely from cognizance conditions of fact and law which their acts have created with respect to other nations not under the jurisdiction of this Court.

Whereas:

With regard to the allegation by the high party defendant that this Court is incompetent because "there is no consistent evidence, in *acts or other classes of authentic documents*, that, in order that the complaint might be admitted, the high party complainant had initiated — much less pursued and exhausted without reaching settlement — the diplomatic steps required by Article I of the convention creating the Court and its Seventeenth Rule," this Court, for its purposes in reaching a decision on this point, has before it the following facts:

First. — It appears in the record of this case, according to the statement of the high party complainant, that in April, 1913, it received private information that the Legislative Power of the Republic of Nicaragua had secretly approved a treaty, concluded also in secrecy, between the Government of that Republic and the Government of the United States of America relating to the opening of an interoceanic canal through Nicaraguan territory, and that the Government of Costa Rica, acting on this information, instructed its diplomatic representatives at Managua and Washington to lodge protests against the conclusion of a convention which it conceived to be in violation of the rights vested in it by existing treaties between Costa Rica and Nicaragua and also by the Cleveland Award of March 22, 1888; and that, according to the evidence contained in the record, such protests were duly presented.

Second. — That the Government of Nicaragua, in its note of June 12, 1913, replied to the protest of Costa Rica, invoking the prerogatives of its sovereignty in justification of its conclusion of the treaty referred to and the necessity, for diplomatic reasons, of maintaining secrecy regarding the contents of that pact.

Third. — That the Government of Costa Rica, upon noting the text of the treaty as it appeared in a newspaper of this capital — which text was said to have been the same as that of the pact that prompted the protests referred to — repeated its demands upon the Nicaraguan Foreign Office and the latter replied insisting upon the necessity of maintaining secrecy regarding its diplomatic agreement with the United States of America; and that, with respect to its contents, it was impossible to make any statements whatever because the agreement had not yet been perfected.

Fourth. — That, having had notice that, although the treaty then in question had been withdrawn from the United States Senate, a new canal treaty was already under consideration by that body for ratification, and, considering, thereupon, that the road to a direct settlement with the Nicaraguan Foreign Office was already closed, the Government of Costa Rica undertook, before the Foreign Office of the United States of America and before the Senate itself, certain steps calculated to prevent the perfecting of the treaty; and that, finally, the pact received the supreme approval of the American Senate on the 18th of February of the present year.

Fifth. — That the high party defendant, in asserting that the necessary steps between the Foreign Offices had not been previously taken, seized upon the circumstance that the negotiations undertaken before it by the Costa Rican Foreign Office were prompted by the conclusion of the Chamorro-Weitzel Treaty which never reached the stage of perfection, and not by the Bryan-Chamorro pact, which is the one that brought about the presentation of the complaint.

The calm examination this Court has made of the foregoing allegations enables it to avoid passing over unnoticed the dialectic error into which the High Party Defendant has fallen in mistaking the basis of the complaint; the Government of Costa Rica has not grounded its action specifically on the name by which the pact that gave rise to the complaint is known, but, instead, on the point that said pact refers to concessions for the construction of an interoceanic canal across Nicaraguan territory, with respect to which concessions it has consistently persisted in its protests ever since the year 1913.

This Court holds that it cannot accept as sufficient to support the exception respecting its competency to try this case the argument of the Nicaraguan Government that the Chamorro-Weitzel and Chamorro-Bryan treaties are two distinct negotiations and that Costa Rica's opposition to the first is of no avail against the second, because the negotiations being identical in their ultimate purpose to bring about the construction of an interoceanic canal — which is the desideratum against which, fundamentally, Costa Rica is complaining — it is impossible to avoid consideration of both negotiations as stages of the same transaction, for the arguments based exclusively on sovereignty and the necessity to safeguard a diplomatic secret, wherein the Nicaraguan Foreign Office takes refuge in its answer to the protests lodged by the Government of Costa Rica against the first pact, necessarily govern in respect to the other; and, therefore, the Court must be, and is, of the opinion that the Costa Rican Government did exhaust the requisite foreign office steps available to it for the purpose of reaching a settlement with the Republic of Nicaragua relating to the negotiations undertaken by the latter with the Government of the United States with the object of procuring the construction of an interoceanic canal; and, in view of the round affirmation of the Nicaraguan Foreign Office that its negotiations were covered by the attributes of national sovereignty, any new undertaking in the premises by the Costa Rican Government could with much more reason have been logically looked upon as futile.

The Court is furthermore of the opinion that it cannot under any theory admit as a correct interpretation the allegation that the final requisite of Article I of the Convention that gave life to this Court should be understood in the sense that the high parties here contending are under the obligation to persist in steps which, besides being futile with respect to reaching the conclusion of a settlement, are subversive of their dignity and convenience.

Whereas:

The Chamorro-Weitzel and Bryan-Chamorro Treaties having, as above set forth, been held by this Court to be two stages in the same diplomatic negotiation, the evidence regarding the unsuccessful exhausting of foreign office proceedings looking to a settlement, which is required by the convention and the Rules of Court in order to establish the competency of this tribunal, and which the high party defendant denies, is constituted by the notes addressed by the Nicaraguan Foreign Office to the diplomatic representative of Costa Rica at Managua on the 12th of June and the 4th of August, 1913, and these documents are authentic.

Whereas:

The allegations on which the high party defendant bases its peremptory exception have been, and are hereby, rejected; and since this Court is the sole power on which, by the will of the nations that created it, has been conferred the right to decide, in each case, whether all possible proper steps looking to an amicable settlement have in fact been exhausted, as well in conformity with the precept contained in Article XXI of the same convention that empowers it to render judgment on the points of fact brought out, according to its free opinion, as in conformity with the power to determine its own competency, conferred upon it by Article XXII, wherein is manifested the will of the nations that subscribed to that fundamental code of this Court that its competency shall not be submitted to the arbitrament of the parties in controversy, this Court must make the declarations that logically develop, to wit, that the high party complainant has fulfilled the sole requisite prescribed by Article I of the said convention in order that the complaint may be admitted, and that as the peremptory exception interposed by the high party defendant is without merit, this Court is competent to decide the complaint brought before it.

CHAPTER II

ANALYSIS OF THE ACTION

Whereas:

The Court has studied, in the first place, the legal construction of the Bryan-Chamorro Treaty in order to ascertain its true international bearing, as well in its reference to the contractual relations between the high signatory parties as with respect to the situation in which third parties in interest, foreign to that pact, find themselves.

The Government of Nicaragua, according to Article I of that instrument, granted in perpetuity to the United States, forever free from all imposts or other public charge, the rights of exclusive ownership necessary and convenient for the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by any other route in Nicaraguan territory. The details of the terms on which the canal shall be constructed, operated, and maintained are to be agreed upon by the two Governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

With variations of form and attenuations of style, but with the same capital thought always predominating, the withdrawn Chamorro-Weitzel pact, which this Court holds to be the first stage in the diplomatic negotiation that culminated in the Bryan-Chamorro Treaty, provides in Article I as follows:

> The Government of Nicaragua hereby cedes in perpetuity to the Government of the United States the unincumbered and exclusive rights necessary and convenient for the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by any other route in Nicaraguan territory; the details of the terms on which such canal shall be constructed, operated, and maintained to be fixed by mutual understanding between the two Governments whenever the construction of the said canal shall be decided upon.

To facilitate a logical interpretation of their articles both documents are paged and arranged alike; they give birth to the same idea, and the same purpose is embodied in each. One uses the word "cedes" and the other the word "grants"; the phrase "exclusive right" was changed to "rights of exclusive ownership," and "functioning" to "service" [to translate literally the Spanish words "*fun-*

cionamiento" and "*servicio*" which are here given in the translator's version as "operation" and "maintenance" in his rendition of both Spanish texts] and variations appear in the preamble and in other parts of the canal stipulations. If any real innovation is to be noted in the later pact it would be that which leaves the construction of the canal to the free volition of the Government of the United States, whereas the first draft of a convention did not contain such an explicit right, but, on the coutrary, left the details and terms of the undertaking to the mutual understanding of the two Governments "whenever the construction of the canal shall be decided upon," and remained silent as to whether, when that time arrived, the will of either or both should be necessary.

With these historic antecedents essential as they are to a precise establishment of the international legal effect of the first article of the pact known as the Bryan-Chamorro Treaty, it is possible to approach with intelligence a solution of the problem: "Is a simple option conveyed or is a sale consummated?" The doubt arises from the divergence on the opinions of the high parties litigant. On the one hand, counsel for the Costa Rican Government maintain that the contract constitutes a perfect sale, whereas, His Excellency the Nicaraguan Minister of Foreign Relations, in his communications to this Court, upholds the theory that a simple option was stipulated, calling for consummation in the future, when the preliminary studies for the location of the canal shall have been made and agreement shall have been reached as to where and when it would be most advantageous to begin operations.

There can be no doubt whatever that the Bryan-Chamorro Treaty effects a perfect sale of the ownership rights necessary for the construction of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by any other route over Nicaraguan territory. "To grant in perpetuity" is to alienate, to transfer ownership; it is a full manifestation of the will to divest with complete renunciation of all the incidents and elements that define and constitute ownership. Here also is present the *animus adquirendum* on the part of the purchaser who undertakes to pay the price of the sale. The indispensable legal conditions exist, therefore, to sustain the fact that the Bryan-Chamorro Treaty constitutes a sale, and, further, a conveyance of title and ownership with a certain and determined object, at least in relation to the real rights which Nicaaragua alienates in the San Juan River and the Great Lake of Nicaragua in connection with the construction of an interoceanic canal.

The concept of an *option*, on the other hand, involves a wholly different idea. Here there is no actual alienation of ownership, but a mere expectancy, realizable only upon the fulfillment of certain stipulated circumstances and conditions. And in the Bryan-Chamorro Treaty, which is of an onerous and commutative character, there is a perfect obligation on the part of the Nicaraguan Government, subject simply to the determination of the United States Government as to the practical execution of the contract. The conveyance might be described as an alternative alienation, but not an option in the legal sense of the word. To concrete: by that diplomatic contract, Nicaragua alienated once and forever the necessary rights for the construction of an interoceanic canal by way of the San Juan River and Great Lake of Nicaragua or by any other route whatever through Nicaraguan territory, and she thereby made it impossible to recover those rights for herself or to make them the subject of other contracts.

Whereas:

With respect to the legal effects of the treaty in so far as they concern Costa Rica, a third party that took no part in its negotiation, consideration must be given to the situation existing between that country and Nicaragua in the sphere of territorial rights prior to the date on which the canal treaty was raised to the category of a law for the high signatory parties, in order to judge the full effect and scope of the violation of rights that is the subject of Costa Rica's action before this Court. The Cañas-Jerez Treaty, a perfectly valid contract still in force, contains, in the concrete, the following stipulations fixing the rights of both Republics in the said river:

> ART. 6. The Republic of Nicaragua shall have exclusive dominion and the highest sovereignty over the waters of the San Juan River from their issue out of the lake to their discharge into the Atlantic; but the Republic of Costa Rica shall have in those waters perpetual rights of free navigation from the said mouth of the river up to a point three English miles below Castillo Viejo, for purposes of commerce, whether with Nicaragua or with the interior of Costa Rica, over the San Carlos or Sarapiquí Rivers or any other course starting from the part which has been established as belonging to that Republic on the banks of the San Juan. The vessels of either country may touch at any part of the banks of the river, where the navigation is common without paying any dues except such as may be established by agreement between the two Governments.

As a result of concessions granted by Nicaragua for the construction of a canal, against the opposition of Costa Rica, the boundary disputes were revived and brought about the arbitration by President Cleveland, who, on the 22d of March, 1888, rendered his award interpreting and revalidating the Cañas-Jerez Treaty. That pact now stands as authority for the solution of all pending doubts respecting boundaries and the canal in question.

The award, after holding that the Cañas-Jerez Treaty was in full force and effect, declared that the Republic of Costa Rica "has not the right of navigation of the River San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service as may be related to and connected with her enjoyment of the 'purposes of commerce' accorded her in said article, or as may be necessary to the protection of said enjoyment."

These two public documents, to which both high parties litigant accord full legal effect and probative value, serve as a guide to this Court in establishing the following propositions:

(*a*) The Republic of Nicaragua possesses exclusively the ownership and highest sovereignty over the San Juan River throughout its entire course; that is to say, she exercises over it the rights of ownership and it forms a part of the national territory subject to her sovereignty.

(*b*) That right, however, is not absolute, but is subject to the restrictions imposed by the treaty itself, to wit: First, the Bay of San Juan del Norte and Salinas Bay are common to the two Republics, and, consequently, the legal principle of co-ownership is perpetuated as to both those terminal points of a possible canal; second, Costa Rica, equally with Nicaragua, is under the obligation to guard and defend the river in the event of foreign aggression — a stipulation that demonstrates effectively the high degree of solidarity in the moral and material interests of the two peoples entertained by the negotiators; and, third, Costa Rica possesses in the San Juan River, for purposes of commerce, permanent rights of free navigation from its outlet as far up as three miles below Castillo Viejo, and the right for her vessels to moor at all points along either bank, exempt from the imposition of any charges, in that part of the stream in which navigation is common.

It is clear, therefore, that the ownership which the Republic of Nicaragua exercises in the San Juan River is neither absolute or unlimited; it is necessarily restricted by the rights of free navigation, and their attendant rights, so clearly adjudicated to Costa Rica — the more so if it is considered that such rights, exercised for revenue and defensive purposes, are, according to the opinion of statesmen, usually confounded in their development with the sovereign powers of the *imperium;* such a concession is equivalent to a real right of use, perpetual and unalterable, that establishes the Republic of Costa Rica in the full enjoyment of practical ownership of a large part of the San Juan River without prejudice to the full ownership reserved to Nicaragua as sovereign over the territory.

By virtue of the decisions contained in the Cleveland Award, and what is held therein relating to the territorial boundaries, the following points are evident:

(*a*) The perfect validity of the Cañas-Jerez Treaty, which validity is given by that instrument, if possible, even greater moral and legal vigor;

(*b*) The proposition that the rights of navigation on the San Juan River that were confirmed in Costa Rica do not extend to vessels of war, but simply to vessels devoted to revenue and defensive purposes — an interpretation that in no way detracts from the doctrine set forth concerning the practical ownership pertaining in great part to Costa Rica over the San Juan River because navigation with vessels of war, aside from constituting a cause for disquiet, would imply a function appropriate to territorial sovereignty;

(*c*) The physical demarcation of the divisionary line between the two countries on the Atlantic side, as a means to a solution of the doubtful points of interpretation raised by the Republic of Nicaragua.

In relation to the possible construction of an interoceanic canal the Cañaz-Jerez Treaty and the Cleveland Award specify the following categorical stipulations, and on them this Court will rest its decision, since they are absolutely pertinent to the case before it:

Article VIII of the Cañas-Jerez Treaty provides:

> If the contracts for canalization or transit entered into before the Nicaraguan Government had knowledge of this convention should for any cause cease to be in force, *Nicaragua agrees not to conclude any others relating to the objects above stated* without first hearing the opinion of the Costa Rican Government *respecting the disadvantages* that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that

> the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, *that opinion shall be advisory.*

Article X of the Cleveland Award provides:

> The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; *and perhaps other rights* not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

These concomitant dispositions restrict Nicaragua's right to dispose freely of her ownership over the waters of the San Juan River, since it is indispensable to the legality of the contractual act first to consult the decisive opinion of Costa Rica in consideration of the fact that both Republics maintain perfect rights in that river, which, since ancient times, has been looked upon as the artery that would some day be availed of to give life to the long projected canal.

Whereas:

Examining the existing *statu juris* between the Republics of Costa Rica and Nicaragua in the light of the clear and positive provisions of the Cañas-Jerez Treaty and the Cleveland Award, declaration will now be made as to how the Bryan-Chamorro Treaty affects that legal status.

That treaty was concluded without official notice to the Government of Costa Rica, notwithstanding a solemn agreement imposed upon Nicaragua, the unescapable obligation to consult the opinion of the former before granting any concession for an interoceanic canal. This solemn agreement was enacted by the Cañas-Jerez

Treaty hereinbefore reproduced in its pertinent parts, in the preceding whereas; and it was confirmed by the arbitral award of President Cleveland as shown in its declaratory paragraph No. 10, also reproduced in the same whereas.

Costa Rica should have been consulted; and her voice could have been consultative or decisive as the case may be. If the concession is one that violates her "natural rights," "it would seem that her consent is necessary," says the Cleveland Award; and, in the event, continues the award, "that the concession does not affect such rights, her voice must be purely consultative."

In the case of the Bryan-Chamorro Treaty, the essental consultation was not had. This Court unanimously decided this point, supported by the Nicaraguan Government's own statement, wherein it explained that failure by attributing to itself sufficient power and authority to execute concessions of that kind in the exercise of its sovereignty unrestricted within its proper jurisdictional limits.

The Court, however, entertains a different opinion in deciding this point. The canal concession executed in favor of the Government of the United States of North America has two aspects: the alienation of the rights necessary for the construction of an interoceanic canal by way of the San Juan River, and the power conferred upon the purchaser to locate that passageway in any other point in Nicaraguan territory. In the first case Costa Rica ought to have been consulted and her voice would have been decisive in character, because any concession covering the San Juan River involves a violation of her "natural rights" specified in paragraph 10 of the Cleveland Award.

Costa Rica possesses undisputed title to the right bank of the river, to the land situated within her jurisdictional limits; she has joint ownership in the ports of San Juan del Norte and in Salinas Bay; she possesses the contractual right of perpetual navigation in the river, beginning at a point three miles below Castillo Viejo, accompanied by the full privilege of transit and commerce, and Nicaragua is impressed with the duty not to interfere with navigation, but, on the contrary, to keep the course of the river open; Costa Rica enjoys also the right to moor her vessels on both banks throughout the entire zone in which navigation is common, and the rights involved in guarding and defense "with all means within her reach."

The Bryan-Chamorro concession, in prescribing the rights necessary for the construction of a canal by way of the San Juan River, ignored the legitimate rights of the high party complainant, since the realization of that work over that route necessarily implies the occupation of the Costa Rican shore or the consequent inundation of her territory as well as the use of the Costa Rican affluents, etc., and in case, for canal purposes, the waters of the San Juan River should be diverted, Costa Rica's right to navigate that river and its affluents wherever Costa Rica enjoys the joint rights above specified, would be rendered nugatory. At least that is the conviction that flows from the letter and spirit of the Cañas-Jerez Treaty and the Cleveland Award when those instruments subordinate all concessions of that kind to the duty of consulting and considering the decisive opinion of Costa Rica.

Without doubt the fact that it was practically impossible to construct an interoceanic canal by way of the San Juan River without affecting Costa Rican lands and waters, which, should they serve as the site of the great undertaking, would have to be respected, weighed heavily in the minds of the illustrious negotiators of 1858 and in that of the honorable arbitrator. Perhaps also the consideration had weight that Costa Rica possessed the right to demand due compensation for the use of elements subject to her jurisdictional power. And, finally, perhaps they were swayed by considerations of a moral and political order, consistent in that, aside from material interests, the two Republics are tightly bound together in their past, their present, and their future — to say nothing of other reasons of greater import — because united by nature in the enjoyment of such an important fluvial highway.

This explains the fact that that Article VIII of the Cañas-Jerez Treaty stipulates that the opinion of the Costa Rican Government shall be consulted "respecting the inconveniences which the undertaking may occasion to the two countries." That pact does not concede to Costa Rica the right to be consulted solely in regard to her own exclusive interests; the high prerogative is conferred to point out the inconveniences that the canal concession might occasion to either country. The moral accord that this signifies confirms the judicial opinion of the Court respecting the conclusion that the natural rights of Costa Rica are affected by the alienation of the inherent power to construct an interoceanic canal by way of the San

Juan River. In regard to the power conferred on the Government of the United States to locate the canal route at any other point in Nacaraguan territory, Costa Rica should also be consulted, but its opinion in such case would be only consultative in character. That prerogative having been conceded by way of homage to high political and moral interests, the opinion of Costa Rica, in this case, possesses only the character of a simple consultative opinion.

In order to penetrate into the spirit and extent of that right, one must look back to the period in which the Cañas-Jerez Boundary Treaty was concluded. A filibustering invasion of Nicaraguan territory had just taken place that profoundly stirred Costa Rica, and the latter aided in the reëstablishment of constitutional order in the neighboring Republic.

It is natural, therefore, that, there being a strong desire for union, they should link together their destinies by means of such an important work — a work that will set new standards for their future.

The diplomatic history of the two countries, as set forth in public documents, shows that repeatedly in the past the Republic of Nicaragua complied with the obligation to consult the Costa Rican Government, thereby giving occasion for an exchange of impressions and ideas relating to canal concessions. Thus, when in 1868 Nicaragua's representative signed at Paris a canal contract with Mr. Miguel Chevalier, it was especially stated in the instrument that "if the Republic of Costa Rica should decline to adhere, the present contract by that fact shall become a nullity." This is equivalent to saying that Nicaragua's interpretation of her contractual obligations with Costa Rica, derived from the Cañas-Jerez Treaty, is the same as that declared by the Cleveland Award and by the present decision of the Central American Court of Justice. At that time that Republic believed, with entire justice, that her territorial ownership was charged with an obligation in favor of Costa Rica, limiting, in the judgment of this Court, her contractual power respecting interoceanic canal projects; and there is no sufficient reason to believe that that obligation has ceased, for, at the present time, the Cañas-Jerez Treaty, far from having expired, stands ratified in its full vigor by the arbitral award of President Cleveland, to which decision the high parties concede the legal value of a perfect and obligatory treaty.

Whereas:

Due account should be taken of the allegations of the Nicaraguan Foreign Office, that its Government, in concluding the Bryan-Chamorro Treaty, acted within its sovereign powers in contracting with relation to its exclusive territorial circumscription. The particular and general terms of that contract, however, go to establish the contrary.

From the face of Article 1 the conviction arises that the alienation affects lands and waters of the San Juan River, fluvial territory over which both countries are impressed with rights and obligations, and that neither is capable of contracting effectively with respect thereto independently of the other, and, even without a violation of the natural rights of Costa Rica, the contract would still lack the indispensable requisite of counting upon the consultative voice of that Republic, respecting "the disadvantages that may result to the two countries" from the convention.

From the tenor of the dispositions so many times invoked in this action, not a single case of concession for canal purposes could be considered that should not be submitted — to the cognisance of Costa Rica always — and to her decision when her rights are injured or affected.

The argument that it would be necessary to perfect the canal contract by means of a subsequent convention between the United States and Nicaragua, in order thereby to fulfill the unescapable requisite of consulting Costa Rica and to obtain, in that case, her consent, also fails to serve as a pretext in giving a just concordant interpretation to the Bryan-Chamorro Treaty in connection with the Cañas-Jerez Treaty of 1858. It has already been said that in the former is conveyed a perfect alienation, a transfer, in consideration of a fixed price, of the rights of ownership necessary and convenient for the canal route, of which route the Republic of the United States of North America is made owner in perpetuity and without limitation.

Neither the Cañas-Jerez Treaty nor the decision of its authorised interpreter favors that thesis. Those diplomatic instruments impose the obligation to consult Costa Rica as an act preliminary to all canal contracts, and they even prescribe the term within which that consultation shall take place in cases wherein an urgent decision may be necessary. Otherwise Costa Rica's right to be heard and to give her decisive opinion would be wholly lacking in efficacy. This should be exercised on an occasion propitious for obtaining some practical result, not only in order to guarantee her territorial and contractual rights, but to lend to the common interest of both peoples the concurrence of her opinion and counsel.

To wait until the projected work shall have been located, until the "natural rights" of Costa Rica shall have suffered concrete and material injury, in order then to be able to determine whether the voice of the high party complainant must be consulted, is equivalent to ignoring that there are any acts, of nations or individuals, which, short of material realisation, possess inherent powers to injure. The civil law provides a remedy against those acts that carry with them a menace to the rights of a private owner, and the same principle governs in interstate relations, which abound with cases wherein a state demands redress, in the name of its fundamental rights of existence and preservation, for an act that involves a simple menace or danger to the development of those rights.

Whereas:

The high party complainant is justified in impugning the Bryan-Chamorro Treaty as violative of its rights, compromised in an alienation made without its concurrence or consent, in order to convey material and moral interests that did not belong exclusively to the grantor, but were derived from a solemn contract that marked out the line of conduct that must be followed in the future in canal projects. And it is of no avail to allege that the American Senate, in ratifying the said treaty, enacted an additional amendment that contained the provision:

> *Provided*, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said convention in the fear or belief that said convention might in some respect impair existing rights of said states, therefore it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended, such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said convention is intended to affect any existing right of any of the said named states.

The intention here indicated is most noble and of high importance, since it establishes an obligation upon the United States; but it is without efficacy in so far as it deals with the legal relations between the nations in litigation, for the injury to the rights of Costa Rica had been consummated and the amendment did not produce the effect of restoring things to the legal status created by the Cañas-Jerez treaty.

Besides, it appears from the Official Gazette of the Nicaraguan Government of August 24th of the present year, that the Nicaraguan Congress, in giving its approval to the Bryan-Chamorro Treaty, excluded the amendment of the American Senate, thus destroying the concert of action of the two Governments on a point of first importance and leaving to the Senate amendment only such moral force as it may have.

Whereas:

Article IX of the General Treaty of Peace and Amity subscribed at Washington stipulates as follows:

> The merchant ships of the signatory countries shall be considered upon the sea, along the coasts, and in the ports of said countries as national vessels, they shall enjoy the same exceptions, immunities, and concessions as the latter, and shall not pay other dues nor be subject to further taxes than those imposed upon and paid by the vessels of the country.

The Bryan-Chamorro Treaty, in granting to the United States a lease of a naval base in the Gulf of Fonseca and of the islands known as Great Corn Island and Little Corn Island in the Caribbean Sea, did not reserve to the high party complainant the rights that are above set forth, and which, reciprocally, were granted by Nicaragua and Costa Rica, for a term of ten years, with an option of extension for a further term. That omission makes those rights uncertain, since those leased territories and the naval base that may be established will be exclusively subject to the laws and sovereign authority of the United States, a nation with which Costa Rica does not maintain the same legal relations, in the matter of navigation, as she does with Nicaragua.

Whereas, finally:

The moment has arrived in which to enter upon an examination of the prayers in the complaint, which are comprised in points second and third, and in which it is prayed that the Bryan-Chamorro pact be declared null and void, not only for the violation of Costa Rica's rights embodied in that treaty, but also on the ground that "when it was signed both contracting parties well knew of Nicaragua's lack of legal capacity to sign unrestrictedly." The Court, in considering this point in the complaint, declared, upon the unanimous consensus of opinion of its members, that it could not render a decision thereon because of the fact that the Republic of the United States of North America was not subject to the jurisdiction of the Central American Court of Justice, a tribunal called upon exclusively to pass upon the laws enforceable among the Central American states in cases brought before it for the settlement of their conflicting interests and their controversies.

To judge of the validity or invalidity of the acts of a contracting party not subject to the jurisdiction of the Court; to make findings respecting its conduct and render a decision which would completely and definitely embrace it — a party that had no share in the litigation, or legal occasion to be heard — is not the mission of the Court, which, conscious of its high duty, desires to confine itself within the scope of its particular powers.

This doctrinary opinion is strengthened by the valuable opinion of the high party complainant as given forth by one of its counsel, the Licentiate don José Astúa Aguilar, who, in formulating his final argument at the public hearing on the 11th of the present month, presented a resumé and concrete statement of the concluding part of the complaint for the purposes of the final decision, as follows:

> That the unquestionable rights of Costa Rica, established by the Cañas-Jerez Treaty, the Cleveland Award, and the General Treaty of Peace and Amity of Washington, have been violated by the high party defendant in the Bryan-Chamorro Treaty, and that, according to the texts of the said conventions and arbitral award, that party was legally incapacitated from concluding that pact without the intervention and consent of my Government.

The Court considered, discussed, and decided that all and each of those violations of right had occurred. As a faithful interpreter of the contractual obligations that bind the countries in dispute, and inspired by the universal doctrine that controls the harmonious existence of states, it declared that the Government of the Republic of Nicaragua committed upon the Government of Costa Rica the violations of legal rights claimed by the latter. Its decision could not be more fully stated, because such decision could have no binding force against a state foreign to the institutional system created by the Treaties of Washington.

Therefore:

This Court of Justice, in the name of the Republics of Central America, in the exercise of the jurisdiction that has been conferred upon it by the Convention of Washington of 1907, to which it owes its existence, and in conformity with the provisions of Articles I, XIII, XXI, XXII, XXIV and XXV of the said convention, and 6, 38, 43, 56, 76 and 81 of the Rules of Court, and also in accordance with the conclusions voted at the session of the 22d of the present month, and by a majority of four votes against the vote of Mr. Justice Gutiérrez Navas, who was not present, hereby renders the following

DECISION:

First. — It is declared that the peremptory exception interposed by the high party defendant is denied, and that, in consequence, this Court is competent to decide the complaint brought by the Government of the Republic of Costa Rica against the Government of the Republic of Nicaragua.

Second. — It is declared that the Government of Nicaragua has violated, to the injury of Costa Rica, the rights granted to the latter by the Cañas-Jerez Treaty of Limits of April fifteen, eighteen hundred and fifty-eight, by the Cleveland Award of March twenty-second, eighteen hundred and eighty-eight, and by the Central American Treaty of Peace and Amity of December twentieth, nineteen hundred and seven; and

Third. — That, respecting the prayer in the complaint asking that the Bryan-Chamorro Treaty be declared null and void, this Court can make no declaration whatsoever.

Let this decision be notified to the high parties in interest and to the other Central American Governments.

ANGEL M. BOCANEGRA,
DANIEL GUTIÉRREZ,
M. CASTRO R,
NICOLÁS OREAMUNO,
SATURNINO MEDAL,
MANUEL ECHEVERRÍA,
Secretary.

Annex 22

COSTA RICA-NICARAGUA, CONVENTION FOR THE CANALIZATION OF THE SAN JUAN RIVER (CORDERO-ZÚÑIGA), SAN JOSÉ, 5 APRIL 1940 (IN FORCE 21 JUNE 1940), ARTICLES 3, 10

SOURCE : MINISTERIO DE RELACIONES EXTERIORES,
CONVENCIÓN PARA LA CANALIZACIÓN DEL RÍO SAN JUAN
Y OTROS PARTICULARES RELACIONADOS CON DICHA CANALIZACIÓN
(SAN JOSÉ : IMPRENTA NACIONAL, 1940), PP. 15, 21

TRANSLATION

Costa Rica-Nicaragua, Convention for the Canalization of the San Juan River (Cordero-Zúñiga), San José, 5 April 1940

ARTICLE III

The Republic of Nicaragua recognizes the Costa Rican territorial and navigational rights, as they are defined and marked right now; but in order that the Republic of Costa Rica may take advantage of all the San Juan waterway for the economic development of the northern regions, which are near the Lake of Nicaragua and the San Juan River, Nicaragua agrees to extend to Costa Rica, once the works referred to on the previous Article are completed, the right of free navigation that Costa Rica has now on one part of the San Juan River, - from three English miles counted from the Castillo Viejo's outside fortifications downstream up to the San Juan River's outlet on the Atlantic-, to all said River's flow, from its origin in the Lake of Nicaragua to its outlet to the sea, also extending this right to all the flow of the channel referred to in the previous Article, from its separation from the San Juan River to its outlet to the Atlantic, whether in the San Juan del Norte Port or whatever port located on the Nicaraguan territory, according to what was stated above.

The concession of this right of navigation on the indicated part of the San Juan River, to wit: from the origin in the Lake of Nicaragua up to three English miles starting from the Castillo Viejo's outside fortifications downstream and in above channel, neither entails any limitation of the sovereignty, nor shall confer a right to Costa Rica to oppose or prevent the works that Nicaragua should see fit to implement on this part of the river - where Costa Rica was not entitled before to free navigation-, and in the river's channel to the Atlantic, referred above.

ARTICLE X

This Convention shall be null and void and the affairs will go back to the state they were before its signing and entry into force, in the case that Nicaragua fails to start the construction of the works, within the conditions herein stated, in a five years term after the last ratification.

Likewise, this Convention shall be null and void, and in such case the affairs shall return to the state they were before its signing and entry into force, in case that Nicaragua fails to complete the works, within the conditions herein stated, in a five years term after they were started.

BIBLIOTECA A.L.
23445

MINISTERIO DE RELACIONES EXTERIORES

CONVENCION

para la Canalización del Río San Juan

y otros particulares relacionados con dicha canalización

EXPOSICION

AL CONGRESO CONSTITUCIONAL DEL LIC DON TOBIAS ZUNIGA MONTUFAR

341.026
C 70 c

IMPRENTA NACIONAL
SAN JOSE, COSTA RICA
1940

Artículo III

La República de Nicaragua reconoce los derechos territoriales y de navegación de Costa Rica, tal como están actualmente definidos y demarcados; pero a fin de que la República de Costa Rica pueda aprovechar toda la vía fluvial del San Juan para el desenvolvimiento económico de las regiones del Norte, cercanas al Lago de Nicaragua y río San Juan, Nicaragua conviene en extender a Costa Rica, una vez terminadas las obras a que se refiere el artículo anterior, el derecho de libre navegación que ahora tiene en una parte del río San Juan, —desde tres millas inglesas contadas de las fortificaciones exteriores del Castillo Viejo aguas abajo hasta su desembocadura en el Atlántico—, a todo el curso de dicho río, desde su origen en el Lago de Nicaragua hasta su salida al mar, haciendo extensivo también este derecho a todo el curso del canal de que se ha hablado en el artículo anterior, desde su separación del río San Juan hasta su terminación en el Atlántico, ya sea en el puerto de San Juan del Norte o en otro cualquiera situado en territorio nicaragüense, según se ha dicho.

La concesión de este derecho de navegación en la indicada parte del río San Juan, o sea desde su origen en el lago hasta tres millas inglesas a partir de las fortalezas exteriores del Castillo Viejo aguas abajo y en el canal mencionado, no entraña ninguna limitación de soberanía ni conferirá derecho a Costa Rica para oponerse o impedir las obras que Nicaragua tenga a bien hacer en esta parte del río,—en donde Costa Rica no tenía antes de ahora derecho de libre navegación—, y en el referido canal del río al Atlántico.

Artículo IV

Como consecuencia de lo estipulado en los artículos anteriores, una vez terminadas las obras de canalización de que se ha hablado, los buques o embarcaciones costarricenses podrán usar el puerto de San Juan del Norte y aquel en que terminare el canal del río, si no fuere el mismo; navegar en la bahía de este nombre y en la del nuevo puerto, en todo el curso del río San Juan y del canal referido y en la parte nicaragüense del río Frío, exactamente en los mismos términos y condiciones en que puedan hacerlo los buques o embarcaciones nicaragüenses, y sujetos a los mismos impuestos que éstos deban pagar. Del mismo modo, los buques o embarcaciones nicaragüenses, podrán navegar por el brazo del Colorado, y usar el puerto costarricense de la Boca del Colorado, en los mismos términos y condiciones, y sujetos a los mismos impuestos que los buques costarricenses.

Esta concesión de navegación no entraña ninguna limitación de soberanía y, por lo tanto, no confiere derecho a Nicaragua para impedir ni oponerse a las obras que Costa Rica tenga a bien hacer en el mencionado brazo del Colorado.

En caso de muerte, ausencia o incapacidad de un miembro de la Comisión o del Dirimente, o en caso de omisión, excusa o cesación en el desempeño de sus funciones, se procederá a sustituirlo inmediatamente en la forma antes indicada. Los fallos dictados por la mayoria de la Comisión o por el Dirimente serán definitivos.

Los avalúos de terrenos o propiedades particulares y de los daños o perjuicios causados a éstas, tendrán por base el valor que tenian los bienes antes de la firma de la presente Convención.

Mientras estén pendientes los procedimientos en averiguación y determinación de las indemnizaciones, no podrán impedirse, demorarse o estorbarse las obras de canalización.

Artículo IX

Ambas Repúblicas contratantes declaran: que las nuevas concesiones que reciprocamente se otorgan en la presente Convención, incluyendo la del articulo VI, tienen por único objeto aprovechar la via fluvial del rio San Juan, la bahia de San Juan del Norte y la del nuevo canal y puerto que se construyeren, para la expansión económica de las regiones vecinas a dicha via en ambos paises. En consecuencia, en el caso de que Nicaragua, de acuerdo con sus compromisos internacionales, celebre un tratado con un tercer Estado para la construcción, operación, mantenimiento y defensa de un canal mayor, de océano a océano, a través de su territorio, las concesiones que Costa Rica y Nicaragua se otorgan por este Convenio, no perjudicarán los derechos que ambos paises tienen en virtud de tratados y laudos anteriores, y tales derechos serán en ese caso debidamente considerados. Quedan, por consiguiente, esos derechos, en la eventualidad de un canal interoceánico, tal como existian con anterioridad a la firma de la presente Convención.

Artículo X

La presente Convención quedará sin ningún valor ni efecto y las cosas volverán al estado que tenian antes de su suscripción y perfeccionamiento, si Nicaragua no hubiere principiado la construcción de la obra, dentro de las condiciones aqui consignadas, en un plazo de cinco años a partir de la última ratificación.

Igualmente, la presente Convención quedará sin ningún valor ni efecto, y en tal caso las cosas volverán al estado que tenian antes de su suscrición y perfeccionamiento, si Nicaragua no hubiese terminado la construcción de la obra, dentro de las condiciones aqui consignadas, en un plazo de cinco años después de comenzadas.

Annex 23

COSTA RICA-NICARAGUA, PACT OF AMITY (SEVILLA-ESQUIVEL), WASHINGTON, D.C., 21 FEBRUARY 1949 (IN FORCE 15 JULY 1949)

SOURCE : 1465 *UNTS* 221-223

No. 24843

NICARAGUA
and
COSTA RICA

Pact of Amity (with annex). Signed at Washington on 21 February 1949

Authentic text: Spanish.
Registered by Nicaragua on 1 July 1987.

NICARAGUA
et
COSTA RICA

Pacte d'amitié (avec annexe). Signé à Washington le 21 février 1949

Texte authentique : espagnol.
Enregistré par le Nicaragua le 1er juillet 1987.

[TRANSLATION — TRADUCTION]

PACT[1] OF AMITY BETWEEN THE GOVERNMENTS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA

The Governments of the Republics of Costa Rica and Nicaragua, having taken the measures necessary to carry out, faithfully and in full, each and every one of the provisions contained in the Resolution of the Provisional Organ of Consultation approved on December 24, 1948, the text of which is annexed to the present Pact of Amity, and is fully accepted by the signatory Governments, reiterating their firm resolve to continue taking all measures necessary, without restriction, to observe fully and faithfully each and all of the provisions and recommendations contained in the said Resolution; desiring to put an end to the situation that has arisen between the two States, and at the same time solemnly to reaffirm their desire to maintain the closest friendship and to strengthen the fraternal bonds which have historically characterized their relations; and wishing to avail themselves of the offer made to them by the Council of the Organization of American States, acting as a Provisional Organ of Consultation, of its good offices in attaining this objective, have agreed to enter into the present Pact of Amity in the presence of the Chairman and other Members of the Council. To this end, His Excellency the President of the Government of Costa Rica, Don José Figueres, and His Excellency the President of Nicaragua, Dr. Víctor M. Román y Reyes, have designated the following Plenipotentiaries:

For the Republic of Costa Rica: His Excellency Ambassador Mario A. Esquivel, Representative of Costa Rica on the Council of the Organization of American States;

For the Republic of Nicaragua: His Excellency Ambassador Dr. Guillermo Sevilla Sacasa, Representative of Nicaragua on the Council of the Organization of American States;

who having exhibited their respective full powers, found in good and due form, agree to sign the present Pact.

I

The Governments of Costa Rica and Nicaragua both affirm that the events brought before the Council of the Organization of American States, acting as a Provisional Organ of Consultation, should not break the fraternal friendship of the two peoples, manifested in their common history and based on the solidarity which binds together the nations of the Hemisphere.

II

The Governments of Costa Rica and Nicaragua agree to prevent the repetition in the future of events of this nature, through the constant application by both Governments of effective measures for the safeguarding of the principles of non-intervention and continental solidarity, as well as for the faithful observance of the treaties, conventions and other inter-American instruments intended to ensure peace and good neighbourliness.

III

The Governments of Costa Rica and Nicaragua recognize the existing obligation of each of them, under the Inter-American Treaty of Reciprocal Assistance of Rio de

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[1] Came into force on 15 July 1949 by the exchange of the instruments of ratification, which took place at Washington.

Janeiro[1] and under Article 20 of the Charter of the Organization of American States,[2] to submit disputes that may arise between them to the methods for the peaceful settlement of international conflicts.

In order to carry out this high purpose, both Governments agree to apply the American Treaty on Pacific Settlement, known as the Pact of Bogotá[3] recognizing that Treaty as having full validity as to disputes between them even before it is formally ratified and enters in consequence into effect between all the American Republics.

IV

The Governments of Costa Rica and Nicaragua likewise undertake to reach an agreement as to the best manner of putting into practice the provisions of the Convention concerning the Duties and Rights of States in the Event of Civil Strife,[4] in cases contemplated by that Convention, so that it may be applied immediately whenever a situation of this kind arises, in the manner provided for in the said agreement, especially with respect to measures for the control and supervision of frontiers, as well as with respect to any other measure intended to prevent the organization or existence of any revolutionary movement against the Government of either of the two Parties in the territory of the other.

V

The Governments of Costa Rica and Nicaragua acknowledge and applaud the action of the Council of the Organization of American States, constituted as a Provisional Organ of Consultation, which has culminated in the present Pact reaffirming the fraternal relations between Costa Rica and Nicaragua.

VI

The Pan American Union shall transmit authentic certified copies of the original of the present Pact to the Signatory Governments, to the other Governments of the States members of the Organization, and to the Secretary-General of the United Nations.

VII

The present Pact shall be ratified and shall enter into force when the ratifications are deposited with the Pan American Union, which shall communicate each deposit to the other Signatory State. Such notification shall be considered as an exchange of ratifications.

IN WITNESS WHEREOF, the Plenipotentiaries above mentioned sign and seal the present Pact at the Pan American Union, in the presence of the Chairman and other Members of the Council of the Organization of American States, in the City of Washington, D.C., this 21st day of February, 1949.

For Costa Rica:
MARIO A. ESQUIVEL

For Nicaragua:
GUILLERMO SEVILLA SACASA

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[1] United Nations, *Treaty Series*, vol. 21, p. 77.
[2] *Ibid.*, vol. 119, p. 3.
[3] *Ibid.*, vol. 30, p. 55.
[4] League of Nations, *Treaty Series*, vol. CXXXIV, p. 45.

ANNEX

RESOLUTION OF THE COUNCIL OF THE ORGANIZATION OF AMERICAN STATES ACTING AS A PROVISIONAL ORGAN OF CONSULTATION APPROVED AT THE MEETING OF DECEMBER 24, 1948

The Council of the Organization of American States, acting as a Provisional Organ of Consultation, after studying the detailed report of the Committee that was in Costa Rica and Nicaragua for the purpose of investigating the facts and antecedents of the situation created between those sister Republics,

Resolves:

I. To request the Governments of Costa Rica and Nicaragua, in compliance with the inter-American Treaty of Reciprocal Assistance, to give full assurances to the Provisional Organ of Consultation that they will immediately abstain from any hostile act toward each other.

II. To make known, with due respect to the Government of Nicaragua, that, in the light of data gathered by the Committee of Information especially appointed for the purpose, that Government could and should have taken adequate measures at the proper time for the purpose of preventing: (*a*) the development, in Nicaraguan territory, of activities intended to overthrow the present regime in Costa Rica, and (*b*) the departure from Nicaraguan territory of revolutionary elements who crossed the frontier and today are prisoners or are still fighting against the Government of Costa Rica.

III. To make known, with due respect to the Government of Costa Rica, that it can and should take adequate measures to rid its territory of groups of nationals or foreigners, organized on a military basis with the deliberate purpose of conspiring against the security of Nicaragua and other sister Republics, and of preparing to fight against their Governments.

IV. To request very respectfully that both Governments, by every available means, faithfully observe the principles and rules of non-intervention and solidarity contained in the various inter-American instruments signed by them.

V. To continue in consultation until positive assurances have been received from the Governments of Costa Rica and Nicaragua, that, as they are assuredly disposed to do, they will adhere strictly to the lofty principles and rules that constitute the juridical basis of American international life.

VI. To recommend that all American Governments actively co-operate toward the best observance of the principles which inspire this Resolution.

VII. To inform all States Members of the Organization of the steps taken in this case.

Annex 24

COSTA RICA-NICARAGUA, AGREEMENT PURSUANT TO ARTICLE IV OF THE PACT OF AMITY (FOURNIER-SEVILLA), WASHINGTON, D.C., 9 JANUARY 1956, ARTICLES 1, 4

SOURCE : 1465 *UNTS* 233, 234

No. 24844

NICARAGUA
and
COSTA RICA

Agreement pursuant to article IV of the Pact of Amity, signed on 21 February 1949 (with a declaration by the Government of Costa Rica). Signed at Washington on 9 January 1956

Authentic text: Spanish.

Registered by Nicaragua on 1 July 1987.

NICARAGUA
et
COSTA RICA

Accord complémentaire à l'article IV du Pacte d'amitié, signé le 21 février 1949 (avec une déclaration du Gouvernement costa-ricien). Signé à Washington le 9 janvier 1956

Texte authentique : espagnol.

Enregistré par le Nicaragua le 1er juillet 1987.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENTS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA PURSUANT TO ARTICLE IV OF THE PACT OF AMITY SIGNED ON 21 FEBRUARY 1949[2]

The Governments of the Republics of Costa Rica and Nicaragua, reaffirming their desire to maintain the close friendship as befits two fraternal and neighbouring peoples, and to avoid in future any dispute which may disrupt their fraternal relations; desiring to implement the provisions of article IV of the Pact of Amity of 21 February 1949[2] concerning the best manner of putting into practice the provisions of the Convention concerning the Duties and Rights of States in the event of Civil Strife[3] through a bilateral agreement; recognizing the effective efforts to bring about peace made by the Council of the Organization of American States acting provisionally as the Organ of Consultation, which, in its resolution II of 24 February 1955, appealed to the two Governments to sign the aforesaid Agreement; have agreed to enter into this Agreement in the presence of the Chairman and other Members of the Council of the Organization of American States. To this end, His Excellency, the President of Costa Rica, Don José Figueres, and His Excellency the President of Nicaragua, General Anastasio Somoza, have designated the following Plenipotentiaries:

For the Republic of Costa Rica: His Excellency Ambassador Fernando Fournier, Representative of Costa Rica on the Council of the Organization of American States;

For the Republic of Nicaragua: His Excellency Ambassador Dr. Guillermo Sevilla Sacasa, Representative of Nicaragua on the Council of the Organization of American States;

who, having shown their full powers, found in good and due form, agree to sign this Agreement:

I

The two Parties, acting in the spirit which should move the members of the Central American family of nations, shall collaborate to the best of their ability in order to carry out those undertakings and activities which require a common effort by both States and are of mutual benefit and, in particular, in order to facilitate and expedite traffic on the Pan American Highway and on the San Juan River within the terms of the Treaty of 15 April 1858[4] and its interpretation given by arbitration on 22 March 1888,[5] and also in order to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other.

II

The two Parties shall, in so far as possible and with the utmost diligence, arrange for the supervision of their common border as a means of preventing the illegal entry of either weapons or armed groups from the territory of one of the Parties into the territory of the other. The authorities of the two Governments, and, in particular, the border authorities, shall exchange, as fully as possible, any information which may come to their attention and which might help to avoid such incidents.

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[1] Came into force on 25 May 1960 by the exchange of the instruments of ratification, which took place at Washington, in accordance with article XV.

[2] See p. 217 of this volume.

[3] League of Nations, *Treaty Series*, vol. CXXXIV, p. 45.

[4] *British and Foreign State Papers*, vol. 48, p. 1049.

[5] *Ibid.*, vol. 79, p. 555.

III

Each Party undertakes to apply the necessary measures to prevent revolutionary movements from being fomented or from rising up in its territory against the other Party.

Each Party undertakes to apply all measures to prevent any person, national or alien, operating anywhere under its jurisdiction from participating in or abetting any subversive undertaking, terrorist act or attack against the Head of State of the other Party, the other members of the executive authorities, the high civil or military authorities, candidates for those positions and their immediate family members, irrespective of whether relations maintained are between the two Governments.

IV

The contribution, supply or provision of weapons, war material or equipment, the training, enlistment, organization or transport of personnel, or the acquisition or supply of monies for the aforesaid purposes, together with any other similar acts, shall be considered as participation for purposes of the preceding article.

V

The two Parties agree to apply, in respect of asylees, articles I, II, III, V, VI, VII, VIII, IX and X of the Convention on Territorial Asylum,[1] signed at the Tenth Inter-American Conference, the text of which follows:

> "*Article I.* Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without through the exercise of this right, giving rise to complaint by any other State."
>
> "*Article II.* The respect which, according to international law, is due the jurisdictional right of each State over the inhabitants in its territory, is equally due, without any restriction whatsoever, to that which it has over persons who enter it proceeding from a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offenses.
>
> "Any violation of sovereignty that consists of acts committed by a government or its agents in another State against the life or security of an individual, carried out on the territory of another State, may not be considered attenuated because the persecution began outside its boundaries or is due to political considerations or reasons of state."
>
> "*Article III.* No State is under the obligation to surrender to another State, or to expel from its own territory, persons persecuted for political reasons or offences."
>
> "*Article V.* The fact that a person has entered into the territorial jurisdiction of a State surreptitiously or irregularly does not affect the provisions of this Convention.

---

[1] United Nations, *Treaty Series*, vol. 1438, No. I-24378.

Annex 25

COSTA RICA-NICARAGUA, AGREEMENT OF UNDERSTANDING BETWEEN THE MINISTRIES OF TOURISM OF THE REPUBLIC OF COSTA RICA AND THE REPUBLIC OF NICARAGUA (ROESCH-GUZMÁN), BARRA DEL COLORADO, 5 JUNE 1994

SOURCE : COPY OF THE ORIGINAL

TRANSLATION

AGREEMENT OF UNDERSTANDING BETWEEN THE MINISTRIES OF TOURISM OF THE REPUBLICS OF NICARAGUA AND COSTA RICA

In strict compliance with the dispositions set forth by the Presidents of the Republics of Nicaragua and Costa Rica in their meeting of the twenty ninth of May, nineteen ninety four in San Juan del Sur, Nicaragua, and within the period stipulated by them, the Ministers of Tourism of those same countries, namely Lic. Fernando Guzmán C. and Ing. Carlos F. Roesch C., respectively, in a meeting held in Barra del Colorado, Costa Rica, on the fifth day of June, nineteen ninety four, decided on the following agreement of understanding

1- The Ministers express their decision to carry out a joint development of tourism between the two countries, at all possible levels and with particular emphasis on sustainable tourism. They will endeavour to immediately turn this economic activity into an irrefutable example of their governments' willingness to strengthen even more the economic and cultural ties and bond of friendship that have united them in the past.

2- In order to coordinate all matters related to the above, it is agreed that a permanent liaison commission be set up between the two ministries, to be presided over by the Ministers and made up of an equal number of members on both sides. The Ministers undertake to announce the names of the members in writing, within a period of no more than fifteen days from the signing of this agreement of understanding. This liaison commission will be responsible for both coordination between ministries and the coordination of all matters related to the other public and private sectors of their respective countries.

3- The Costa Rican Minister expresses his willingness to cooperate with Nicaragua, within his possibilities, in regard to all matters concerning training and tourism marketing, at every level, offering his support to Nicaragua in its efforts to obtain the necessary financial backing from the local and international organizations it deems appropriate.

4- The Costa Rican Minister likewise expresses his willingness to offer his assistance, within his possibilities, in the elaboration of tourism development strategies appropriate to Nicaragua, in order that it may take advantage of the success Costa Rica has achieved and, by the same token, avoid making the same mistakes.

5- With regard to the development of tourism in the border zones between the two nations, both Ministers reiterate their commitment to participate in and cooperate with the efforts of the Bi-national Yes-to-Peace Commission. In this manner, they will endeavour to assist in the development and transit of tourism between the two countries and develop tourism that is sustainable between them, in close collaboration with the private sectors of both countries' tourist industries. To this end, they agree to sign a document, alongside this one, that deals specifically with this topic.

6- Both Ministers will take all the steps they consider necessary for securing the joint investment and tourist development of the tourist businesses in both nations.

We hereupon agree to sign on the fifth of June, nineteen ninety four in Barra del Colorado, Costa Rica.

(signature)	(signature)
Mr. Fernando Guzmán Cuadra Minister of Tourism Republic of Nicaragua	Mr. Carlos F. Roesch Carranza Minister of Tourism Republic of Costa Rica

I·C·T

INSTITUTO COSTARRICENSE DE TURISMO
TELEFONO (506) 23-1733 FAX: (506) 55-4997 APARTADO. 777-1000
SAN JOSE, COSTA RICA

ACUERDO DE ENTENDIMIENTO
ENTRE LOS MINISTERIOS DE TURISMO DE LAS REPUBLICAS DE NICARAGUA Y COSTA RICA

En cumplimiento fiel a las disposiciones de los Presidentes de las Repúblicas de Nicaragua y Costa Rica, en su reunión del veinte y nueve de mayo de mil novecientos noventa y cuatro, en San Juan del Sur, Nicaragua, y dentro del plazo indicado por ellos, los Ministros de Turismo de estos países, Lic. Fernando Guzmán C. y el Ing. Carlos F. Roesch C., respectivamente, reunidos en Barra de Colorado, Costa Rica, el quinto día de junio de mil novecientos noventa y cuatro, convienen en el siguiente acuerdo de entendimiento:

1- Los Ministros manifiestan su decisión de realizar un desarrollo conjunto del turismo entre ambos países, a todos los niveles posibles y con particular énfasis en el turismo sustentable. Procurarán que esta actividad económica se convierta de inmediato en una muestra fehaciente de la voluntad de sus gobiernos,de estrechar aún más los lazos comerciales, culturales y de amistad que históricamente los ha unido.

2- Para coordinar todo lo pertinente al punto anterior, se acuerda conformar una comisión de enlace permanente entre los dos ministerios, presidida por los Ministros y conformada por un número igual de miembros por ambas partes. Los Ministros se comprometen a notificar por escrito los nombres de las personas integrantes, en un plazo no mayor a quince días de la firma de este acuerdo de entendimiento. Esta comisión de enlace tendrá, tanto la responsabilidad de la coordinación interministerial como la coordinación de todo lo pertinente con los otros sectores públicos y privados de sus respectivos países.

3- El Ministro de Costa Rica manifiesta su voluntad de cooperar, dentro de sus posibilidades, con Nicaragua en todo lo que corresponda a capacitación y mercadeo turístico, a todo nivel, dando su apoyo para que Nicaragua busque la financiación necesaria con los organismos locales e internacionales que considere pertinentes.

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SAN JOSE, COSTA RICA

4- Así mismo, el Ministro de Costa Rica manifiesta su voluntad en facilitar, al grado de sus posibilidades, su asistencia en el diseño de las estrategias de desarrollo turístico oportunas para Nicaragua, para que se aproveche de los éxitos logrados en Costa Rica y, a su vez, procure no cometer los mismos errores.
5- En relación con el desarrollo del turismo en la zonas fronterizas entre las dos naciones, ambos Ministros reiteran su total voluntad de participar y cooperar con los esfuerzos de la Comisión Binacional Si-A-Paz. De esta manera, procurarán facilitar el desarrollo y tránsito del turismo entre las dos naciones y lograr un desarrollo de turismo sustentable entre ellas, en coordinación estrecha con los sectores privados de la industria turística de ambos países. Para ello, acuerdan firmar, paralelo a este, un documento que específicamente trate este tema.
6- Ambos Ministros efectuarán todas las acciones que consideren pertinentes para lograr la coinversión y desarrollo turístico conjunto de parte de los empresarios turísticos de ambas naciones.

Firmamos de acuerdo, a los cinco días del mes de junio de mil novecientos noventa y cuatro en Barra de Colorado, Costa Rica,

Lic. Fernando Guzman Cuadra
Ministro de Turismo
República de Nicaragua

Ing. Carlos E. Roesch Carranza
Ministro de Turismo
República de Costa Rica

COSTA RICA SERA SIEMPRE NUESTRA MEJOR OPCION

Annex 26

COSTA RICA-NICARAGUA, AGREEMENT OF UNDERSTANDING BETWEEN THE MINISTRIES OF TOURISM OF THE REPUBLIC OF COSTA RICA AND THE REPUBLIC OF NICARAGUA ON THE TOURIST ACTIVITY IN THE BORDER ZONE OF THE SAN JUAN RIVER (ROESCH-GUZMÁN), BARRA DEL COLORADO, 5 JUNE 1994

SOURCE : COPY OF THE ORIGINAL

TRANSLATION

AGREEMENT OF UNDERSTANDING BETWEEN THE MINISTRIES OF TOURISM OF THE REPUBLICS OF NICARAGUA AND COSTA RICA ON THE TOURIST ACTIVITY IN THE BORDER ZONE OF THE SAN JUAN RIVER

In strict compliance with the dispositions set forth by the Presidents of the Republics of Nicaragua and Costa Rica in their meeting of the twenty ninth of May, nineteen ninety four in San Juan del Sur, Nicaragua, and within the period stipulated by them, the Ministers of Tourism of those same countries, namely Lic. Fernando Guzmán C. and Ing. Carlos F. Roesch C., respectively, in a meeting held in Barra del Colorado, Costa Rica, on the fifth day of June, nineteen ninety four, decided on the following agreement of understanding on the tourist activity in the border zone of the San Juan River:

1- Both Ministers expressed their wholehearted intention of developing joint sustainable tourism in the San Juan River zone, with the aim of establishing a fluid transit zone between the two countries and coordinate co-investment and development.

2- In order to coordinate all matters pertaining to the previous point, they agree to employ the commission of permanent liaison between the two ministries, which was set up in the agreement of understanding signed on this same day.

3- The Ministers, aware of the situation that exists within the area, agree to seek out and implement all the mechanisms at their disposal in order to promote the development of tourist activity. To this end, they agree to:

   A- Carry out a detailed account of every tourist company operating in the zone, as well as of the ships used and their registration acronyms, and inform the other country of these.

   B- Develop the necessary mechanisms, within the next thirty days, in order to be able to provide pre-registered companies with tourism cards, which the latter must purchase, fill in correctly and hand over to the relevant authorities. The Ministers will endeavour to ensure that the same tourist card will serve the tourists for multiple entries and exits during the thirty days of its validity and that the passports are not the tourists' only valid form of identification.

   C- Develop the necessary mechanisms, within the next thirty days, for providing pre-registered companies with sports fishing licenses, which they must purchase, fill in correctly and hand over to the relevant authorities.

   D- Undertake the necessary construction and improvements, within a period of six months, in order that the ships and the tourists may comply with the required migration procedures efficiently, promptly and safely.

E- Coordinate with the Bi-national Commission of Yes-to-Peace, endeavouring that, insofar as it is possible, those in charge of dealing with tourists are park keepers or migration officials.

F- That the corresponding immigration authorities of both countries keep operating their respective offices during all the days and timetables that are deemed appropriate to maximize the tourist movement between both countries.

The Ministers agree to request SITCA that in its actions before the international community sustainable tourism be included as an alternative priority for the integral development of the zone.

We agree to sign on the fifth of June, nineteen ninety four in Barra del Colorado, Costa Rica.

(signature)	(signature)
Lic. Fernando Guzmán Cuadra	Ing. Carlos F. Roesch Carranza
Minister of Tourism	Minister of Tourism
Republic of Nicaragua	Republic of Costa Rica

I·C·T
INSTITUTO COSTARRICENSE DE TURISMO
TELEFONO (506) 23-1733 FAX: (506) 55-4997 APARTADO. 777-1000
SAN JOSE, COSTA RICA

ACUERDO DE ENTENDIMIENTO ENTRE LOS MINISTERIOS DE TURISMO DE LAS REPUBLICAS DE NICARAGUA Y COSTA RICA SOBRE LA ACTIVIDAD TURISTICA EN LA ZONA FRONTERIZA DEL RIO SAN JUAN

En cumplimiento fiel a las disposiciones de los Presidentes de las Repúblicas de Nicaragua y Costa Rica en su reunión del veinte y nueve de mayo de mil novecientos noventa y cuatro en San Juan del Sur, Nicaragua, y dentro del plazo indicado por ellos, los Ministros de Turismo de estos países, Lic. Fernando Guzmán C. y el Ing. Carlos F. Roesch C, respectivamente, reunidos en Barra de Colorado, Costa Rica, el quinto día de junio de mil novecientos noventa y cuatro, convienen en el siguiente acuerdo de entendimiento sobre la actividad turística en la zona fronteriza del Rio San Juan:

1- Ambos Ministros manifiestan su decidida intención de realizar un desarrollo turístico sustentable en conjunto en la zona del Rio San Juan, teniendo como meta alcanzar la conformación de una zona de tránsito fluido entre ambos países y de co-inversión y desarrollo coordinado.
2- Para coordinar todo lo pertinente al punto anterior, acuerdan utilizar la comisión de enlace permanente entre los dos ministerios, la cual fue creada en el acuerdo de entendimiento firmado este mismo día.
3- Los Ministros, concientes de la situación existente en la zona, acuerdan buscar e implementar todos los mecanismos a su alcance para facilitar el desarrollo de la actividad turística, por ello convienen en:
  A- Realizar un registro detallado de cada compañía turística que opere en la zona, de los navíos utilizados y sus siglas de registro, y comunicarlo al otro país.
  B- Desarrollar, dentro de los proximos treinta días, los mecanismos necesarios para que puedan entregarle tarjetas de turismo a las empresas pre-registradas, quienes tendrán la obligación de comprarlas, llenarlas correctamente y entregarlas a las autoridades correspondientes. Los Ministros procurarán que la misma tarjeta de turismo le sirva al turista para múltiples entradas y salidas durante los treinta días de su validez, así mismo, que el pasaporte no sea el único documento válido de identificación para los turistas.

C- Desarrollar, dentro de los proximos treinta días, los mecanismos necesarios para que puedan entregarle licencias de pesca deportiva a las empresas pre-registradas, quienes tendrán la obligación de comprarlas, llenarlas correctamente y entregarlas a las autoridades correspondientes.

D- Efectuar las construcciones y mejoras necesarias para que los navíos y los turistas puedan cumplir con los trámites migratorios requeridos con eficiencia, rapidez y seguridad, para lo cual se establece un plazo de seis meses.

E- Coordinar con la Comisión Binacional de Si-A-Paz, procurando que, en la medida de lo posible, los responsables de atender a los turistas sean guarda parques u oficiales de migración.

F- Que las autoridades de migración de ambos países mantengan sus respectivas oficinas funcionando durante todos los días y horarios que se consideren pertinentes para maximizar el movimiento turístico entre los dos países.

4- Los Ministros acuerdan solicitarle a SITCA que, en sus gestiones ante la comunidad internacional, que se incluya al turismo sustentable como una alternativa prioritaria para el desarrollo integral de la zona.

Firmamos de acuerdo, a los cinco días del mes de junio de mil novecientos noventa y cuatro, en Barra de Colorado, Costa Rica,

Lic. Fernando Guzmán Cuadra
Ministro de Turismo
República de Nicaragua

Ing. Carlos F. Roesch Carranza
Ministro de Turismo
República de Costa Rica

Annex 27

ARMY OF THE REPUBLIC OF NICARAGUA-MINISTRY OF PUBLIC SECURITY OF THE REPUBLIC OF COSTA RICA, JOINT COMMUNIQUÉ (CUADRA-CASTRO), LA CRUZ, 8 SEPTEMBER 1995

SOURCE : COPY OF THE ORIGINAL

TRANSLATION

JOINT COMMUNIQUÉ ISSUED BY THE ARMY OF THE REPUBLIC OF NICARAGUA AND THE MINISTRY OF PUBLIC SECURITY OF THE REPUBLIC OF COSTA RICA

The Army of the Republic of Nicaragua and the Police Force of the Republic of Costa Rica, represented by the Commander-in-Chief of the Army of the Republic of Nicaragua, Army General Joaquín Cuadra Lacayo and the Minister of Public Security of the Republic of Costa Rica, Lic. Juan Diego Castro Fernández, in the exercise of their respective legal powers, issue the following communiqué:

With a view to complying with the National Defence missions, in addition to those of the Defence of Territorial Integrity, Independence and Sovereignty conferred by both countries' respective Constitutions and, with the aim of strengthening ties of friendship, respect, cooperation and the coordination of joint operations that contribute to the peace and stability of the border sectors common to both nations, the Nicaraguan Army and the Costa Rican Police Force inform the appropriate authorities and the general public of the following:

FIRST: In the interests of strengthening the National Security, sovereignty and independence of our countries, the Nicaraguan Army and the Costa Rican Police Force will coordinate, as of this date, the operational plans that involve our authorities and allow for the necessary development of joint, parallel patrolling at the border of both countries, thereby joining forces in the battle against the illegal trafficking of persons, vehicles, contraband of any nature and joint operations, following the exchange of information and planning carried out by both parties.

SECOND: As of this moment, the chiefs of the border units of both countries will coordinate and cooperate more closely in planning and carrying out joint parallel patrolling along our countries' common border, exchanging operative information of the common entities involved, with respect to all activities affecting the stability of the terrestrial and aerial border zone related to drug trafficking, arms trafficking, smuggling, rustling, naval piracy, illegal trafficking of persons and the presence and/or passage of criminal gangs.

THIRD: Both institutions will coordinate the training of guides and canine techniques in each country's national centres, in addition to exchanging experiences or seminars, in specialties related to dog training and the exchange of experiences in police teaching specialties. Meals, travel allowances, transport and accommodation expenses will be covered by the country hosting the training.

FOURTH: In the interests of developing cordial bilateral cooperation, a quarterly meeting will be held between:

- The (Northern) Border Police Commanders of the Republic of Costa Rica and the Nicaraguan Army's Chief of the Southern Military Detachment.

- The Border Police Commander of Santa Cruz, Costa Rica and the Chief of the 4th Regional Military Command of the Nicaraguan Army.

- To carry out meetings, after specifying both parties' points of interest on the agenda, with operations chiefs (Chief of Staff/Chief of Operations of First and Second Command)

We hereupon sign at "El Murciélago" Training Centre, La Cruz, Costa Rica on the eighth of September, nineteen ninety five.

(signature)
JOAQUIN CUADRA LACAYO
Army General
Commander-in-Chief
of the Nicaraguan Army

(signature)
JUAN DIEGO CASTRO FERNANDEZ
Minister of Public Security
Republic of Costa Rica

(signature)
FERNANDO CALDERA AZMITIA
Chief of National Police
Republic of Nicaragua
Brigade Commander

(signature)
JUAN FELIX BARRANTES ALFARO
Colonel of the Costa Rican Police Force

COMUNICADO CONJUNTO DEL EJERCITO DE LA REPUBLICA DE NICARAGUA Y EL MINISTERIO DE SEGURIDAD PUBLICA DE LA REPUBLICA DE COSTA RICA

El Ejército de la República de Nicaragua y la Fuerza Pública de la República de Costa Rica, representados por el Comandante en Jefe del Ejército de la República de Nicaragua, General de Ejército Joaquín Cuadra Lacayo y el señor Ministro de Seguridad Publica de la República de Costa Rica, Lic. Juan Diogo Castro Fernández, en ejercicio de las facultades legales correspondientes, emiten el siguiente comunicado:

El Ejército de Nicaragua y la Fuerza Publica de Costa Rica, con el objetivo de dar cumplimiento a las misiones de Seguridad Nacional, Defensa de la Integridad Territorial, Independencia y Soberanía, conferidos por las respectivas Constituciones de ambos países y con el objetivo de fortalecer las relaciones de amistad, respeto, cooperacion y coordinación de operaciones conjuntas que contribuyan con la paz y estabilidad en los sectores fronterizos comunes a nuestros Estados, damos a conocer a las autoridades competentes y ciudadanía en general lo siguiente:

PRIMERO: El Ejército de Nicaragua y la Fuerza Pública de Costa Rica, en interés de fortalecer la Seguridad Nacional, la soberanía e independencia de nuestros países, coordinarán a partir de esta fecha los planes operativos, que involucren a nuestras autoridades y permitan el desarrollo oportuno del patrullaje conjunto paralelo al bordo fronterizo de ambos países, aunando esfuerzos en la lucha contra el tránsito ilegal de personas, vehículos, contrabando de todo tipo y operaciones conjuntas, previo intercambio de información y planificación de ambas partes.

SEGUNDO: Los jefes de unidades fronterizas de ambos países, a partir de este momento, coordinarán y estrecharán la cooperación en la planificación y realización de patrullajes conjuntos paralelo al bordo fronterizo comun de nuestros Estados, intercambiando información operativa de los órganos comunes involucrados, en todas las actividades que afecten la estabilidad de la zona fronteriza terrestre y aérea, relacionadas al *narcotráfico*, trasiego de armas, contrabando, abigeato, piratería naval, tránsito ilegal de personas, presencia y/o movimiento de banda (s) de delincuentes.

TERCERO: Ambas instituciones coordinarán la instrucción de guías y técnicas canina, en los centros nacionales de cada país, así como realizar intercambio de experiencias o seminarios, en esas especialidades propias de la instruccion canina e intercambio de experiencia en especialidades docentes policiales. Los gastos de alimentación, viáticos, transporte y alojamiento, seran asumidos por el pais sede de la instrucción.

CUARTO: En interés del armonioso desarrollo de cooperación bilateral, establecemos la realización de una reunión trimestral, entre.

- Los Comandantes de Policía de Fronteras (Norte) de la República de Costa Rica y el Jefe del Destacamento Militar Sur del Ejército de Nicaragua.

- El Comandante de Policía de Frontera de La Cruz, Costa Rica y el Jefe del 4to. Comando Militar Regional del Ejército de Nicaragua.

- Llevar a cabo reuniones, previa puntualización de la agenda de interés de ambas partes con la representación de jefes al nivel operativo (Jefe de Estado Mayor/Jefe de Operaciones con Primer y Segundo Comandante).

Firmamos en el Centro de Entrenamiento El Murciélago", La Cruz, Costa Rica a los 8 días del mes de setiembre de mil novecientos noventa y cinco.

JOAQUIN CUADRA LACAYO
General de Ejército
Comandante en Jefe
del Ejército de Nicaragua

JUAN DIEGO CASTRO FERNANDEZ
Ministro de Seguridad Pública
República de Costa Rica

FERNANDO CALDERA AZMITIA
Jefe de la Policía Nacional
República de Nicaragua
Comandante de Brigada

JUAN FELIX BARRANTES ALFARO
Coronel de la Fuerza Pública de
Costa Rica

Annex 28

MINISTRY OF DEFENCE OF NICARAGUA-MINISTRY OF GOVERNMENT, POLICE AND PUBLIC SECURITY OF COSTA RICA, JOINT COMMUNIQUÉ (CUADRA-LIZANO), MANAGUA, 30 JULY 1998

SOURCE : COPY OF THE ORIGINAL

TRANSLATION

JOINT COMMUNIQUÉ
OF THE MINISTRY OF DEFENCE OF NICARAGUA AND THE MINISTRY OF GOVERNMENT, POLICE AND PUBLIC SECURITY OF COSTA RICA

The Ministers of Defence of Nicaragua and of Government, Police and Public Security of Costa Rica, aware of the needed cooperation between both neighbouring and bordering States for the development and security of their shared border zone and, in view of the recent differences that have occurred in the last days, declare the following:

FIRST: The Costa Rican Minister of Government, Police and Public Security expresses the respect of his country's authorities' for the dominion and sovereign jurisdiction of Nicaragua over the entire San Juan River, as set down in the international documents currently in force between the two States.

SECOND: The Nicaraguan Minister of Defence, for his part, expresses his respect for Costa Rica's navigation rights on the San Juan River, three English miles downstream from Castillo Viejo to its estuary at Punta Castilla in the Caribbean Sea, set down in the international instruments currently in force between the two nations.

THIRD: Both Ministers manifest their willingness to resolve the regrettable inconveniences that occurred over the past few days and, for this purpose, they are establishing the following orders for their respective subordinates:

1. The crew of the vessels of the Public Force of Costa Rica that carry out relief of police and the supply of the border posts located on the right bank of the San Juan River will navigate along the aforementioned river after having given the required notice carrying only their normal arms, and the Nicaraguan authorities may accompany the Costa Rican vessels making this journey along the San Juan River in their own separate means of transportation. Should the Nicaraguan vessel not accompany the Costa Rican vessels, the latter may carry out their rounds in keeping with the corresponding border post reports as indicated in this agreement.

2. The Costa Rican authorities must report to the Nicaraguan posts throughout their journey along the San Juan River.

3. The operational mechanics of this agreement will be defined and regulated in a subsequent meeting of senior officers from the Nicaraguan military authorities and the Costa Rican police force.

4. **The Ministers of Defence of Nicaragua and of Government, Police and Public Security of Costa Rica agree to hold regular meetings in the interest of maintaining harmonious and mutually cooperative relations.**

In witness whereof, we sign this agreement in Managua, Nicaragua on the thirtieth of July, nineteen ninety eight.

JAIME CUADRA S.
MINISTER OF DEFENCE
OF NICARAGUAPOLICE

JUAN RAFAEL LIZANO S.
MINISTER OF GOVERNMENT,
AND PUBLIC SECURITY

"COMUNICADO CONJUNTO MINISTERIO DE DEFENSA DE NICARAGUA Y MINISTERIO DE GOBERNACION, POLICIA Y SEGURIDAD PUBLICA DE COSTA RICA

Los Ministros de Defensa de Nicaragua y de Gobernación, Policía y Seguridad Pública de Costa Rica, conscientes de la necesaria cooperación entre ambos Estados fronterizos y hermanos para el desarrollo y seguridad de su zona fronteriza común y habida cuenta de las diferencias suscitadas en los últimos días, manifiestan lo siguiente:

Primero: El Ministro de Gobernación, Policía y Seguridad Pública de Costa Rica manifiesta el respeto de las autoridades de su país al dominio y sumo imperio de Nicaragua sobre la totalidad del río San Juan, tal y como lo definen los instrumentos internacionales vigentes entre ambos Estados.

Segundo: El Ministro de Defensa de Nicaragua manifiesta por su parte el respeto a los derechos de navegación de Costa Rica sobre el río San Juan, desde tres millas inglesas río abajo del Castillo Viejo hasta su desembocadura en Punta Castilla en el Mar Caribe, definidos por los instrumentos internacionales vigentes entre ambos Estados.

Tercero: Ambos Ministros manifiestan su plena voluntad de solución de los lamentables inconvenientes suscitados en días anteriores y para tal efecto adoptan las siguientes directrices para sus correspondientes subordinados:

1. Los tripulantes de las embarcaciones de la Fuerza Pública de Costa Rica que realizan los relevos de policía y el abastecimiento de los puestos fronterizos ubicados en la ribera derecha del Río San Juan, navegarán por el mencionado río, una vez hecho el aviso correspondiente, portando únicamente sus armas de reglamento, para lo cual las autoridades militares nicaragüenses podrán acompañar, en sus propios medios de transporte, a las embarcaciones costarricenses que realicen el recorrido por el río San Juan. Cuando la nave nicaragüense no acompañe las naves costarricenses, éstas podrá realizar el recorrido respetando los reportes correspondientes en los puestos fronterizos de conformidad con lo indicado en este acuerdo.

2. Las autoridades costarricenses deberán reportarse en los puestos nicaragüenses a lo largo del recorrido que realicen en las aguas del Río San Juan.

3. La mecánica operativa del presente acuerdo será definida y reglamentada en una reunión posterior entre los altos mandos de las autoridades militares nicaragüenses y de la fuerza pública de Costa Rica.

4. Los Ministros de Defensa de Nicaragua y de Gobernación, Policía y Seguridad Pública de Costa Rica, en interés de mantener una relación de armonía y mutua cooperación, acuerdan celebrar reuniones periódicas.

En fe de lo cual firmamos el presente acuerdo en la ciudad de Managua, Nicaragua, a los treinta días del mes de Julio de mil novecientos noventa y ocho.

JAIME CUADRA S.
MINISTRO DE DEFENSA DE
NICARAGUA

JUAN RAFAEL LIZANO S.
MINISTRO DE SEGURIDAD PUBLICA
DE COSTA RICA"

Annex 29

COSTA RICA-NICARAGUA, AGREEMENT (TOVAR-CALDERA), ALAJUELA, 26 SEPTEMBER 2002

SOURCE : 2197 *UNTS* 78-79

[TRANSLATION - TRADUCTION]

THE MINISTERS FOR FOREIGN AFFAIRS OF THE REPUBLICS OF COSTA RICA AND NICARAGUA,

Expressing their unswerving will and determination to develop and strengthen their ties of brotherhood and good-neighbourliness, as countries united by strong historical, geographical, cultural and human ties,

Considering the importance to our peoples of economic integration projects such as the customs union, the free-trade agreement between Central America and the United States of America, the Puebla-Panamá Plan and the association agreement between Central America and the European Union, among other significant regional initiatives;

Noting the importance of deepening cooperation between the two States for the sustainable development of the border region, including the establishment of a special development fund;

Bearing in mind that the strengthening of our good-neighbourly relations is essential to the energetic promotion of Central American economic and cultural integration and the sustainable human development of our countries for the benefit of our peoples;

Convinced that economic integration projects and the creation of an appropriate climate for investment, trade and international cooperation can be further promoted insofar as both parties resort to peaceful means of settlement of any situations that may affect the successful course of their relations; and

Confident that the fraternal spirit that unites our peoples and the renewed bilateral relations will allow for the strengthening of a broad area of understanding and harmony to our mutual advantage,

Have agreed as follows:

1. The Governments of Costa Rica and Nicaragua shall, from today's date, as a matter of cross-border comity, eliminate any charge that might hinder free movement across their common border by means of a temporary entry or exit permit.

2. The Government of Costa Rica expresses its willingness to eliminate the fee for visas granted to Nicaraguan citizens carrying an ordinary passport as from 1 January 2003 If the elimination of the visa fee requires an amendment to the existing law, the Government of Costa Rica shall promote and support such an amendment, on the understanding that the Legislative Assembly shall take a decision in accordance with its sovereignty. As soon as the Government of Costa Rica eliminates the visa fee, the Government of Nicaragua shall also eliminate, at the national level, the charge for tourist cards and migratory services for Costa Rican citizens. To those ends, the Governments of Costa Rica and Nicaragua shall immediately undertake the appropriate technical studies.

3. The Government of Nicaragua undertakes to maintain, for a period of three years from today's date, the legal status existing on today's date with respect to its declaration of acceptance of the jurisdiction of the International Court of Justice. For its part, during the same period, the Government of Costa Rica will not engage in initiating any action or any

international protest against Nicaragua neither before the Court nor before any other authority on any matter or protest mentioned in treaties or agreements currently in force between both countries.

4. Nothing in the preceding paragraphs shall be interpreted or presumed to be a renunciation or as a diminishing of rights that each Party has and retains in accordance with treaties currently in force in the area of international law.

In witness whereof, we sign, with validity and immediate effect, in the city of Alajuela, Republic of Costa Rica, two original texts, both in the Spanish language and equally valid, on 26 September 2002.

Roberto Tovar Faja
Minister of Foreign Affairs and Worship of the Republic of Costa Rica

Norman Caldera Cardenal
Minister of Foreign Affairs of the Republic of Nicaragua

[SPANISH TEXT — TEXTE ESPAGNOL]

Los Ministros de Relaciones Exteriores de las Repúblicas de Costa Rica y Nicaragua:

Manifestando su inquebrantable voluntad y determinación de desarrollar y fortalecer sus lazos de hermandad y buena vecindad, como corresponde a países unidos por recios vínculos históricos, geográficos, culturales y humanos;

Considerando la importancia que tienen para nuestros pueblos los proyectos de integración económica, como lo son la unión aduanera, el tratado de libre comercio de Centroamérica y los Estados Unidos de América, el Plan Puebla-Panamá y el acuerdo de asociación entre Centroamérica y la Unión Europea, entre otras importantes iniciativas regionales;

Destacando la importancia de profundizar la cooperación entre ambos estados para el desarrollo sostenible de la región fronteriza, incluyendo la creación de un fondo especial de desarrollo;

Teniendo presente que el fortalecimiento de nuestras relaciones de buena vecindad es fundamental para impulsar con gran dinamismo la integración económica y cultural centroamericana y el desarrollo humano sostenible de nuestros países, para el bienestar de nuestros pueblos;

Convencidos de que los proyectos de integración económica y la creación del clima adecuado para la inversión, el comercio y la cooperación internacional, podrán verse potenciadas en la medida en que ambos países recurran a los medios pacíficos de solución de aquellas situaciones que puedan afectar la buena marcha de sus relaciones,

y

Confiados en que el fraterno espíritu que une a nuestros pueblos y las renovadas relaciones bilaterales permiten fortalecer un amplio espacio de entendimiento y mutua concertación en beneficio recíproco,

Han convenido declarar lo siguiente:

1. Los Gobiernos de Costa Rica y Nicaragua, eliminarán a partir de esta fecha, cualquier cobro que afecte el libre tránsito vecinal fronterizo que se realiza a través de los permisos vecinales, como parte de las cortesías de frontera.

2. El Gobierno de Costa Rica manifiesta su disposición de eliminar el cobro de las visas que se otorguen a ciudadanos nicaragüenses portadores de pasaporte ordinario, a partir del día primero de enero del 2003. Si para eliminar el cobro de las visas se requiere modificar la legislación vigente, el Gobierno de Costa Rica promoverá y apoyará dicha modificación, en el entendido que la Asamblea Legislativa resolverá de conformidad con su soberanía. En el momento en que el Gobierno de Costa Rica elimine el cobro de las visas, el Gobierno de Nicaragua también eliminará a nivel nacional el cobro en concepto de tarjeta de turismo y de servicios migratorios a los ciudadanos costarricenses. A estos efectos los Gobiernos de Costa Rica y Nicaragua, promoverán, de inmediato los estudios técnicos respectivos.

3. El Gobierno de Nicaragua se compromete a mantener, durante un plazo de tres años a partir de hoy, la situación jurídica existente en esta fecha, respecto a su declaración de aceptación de la jurisdicción de la Corte Internacional de Justicia. Por su parte, durante dicho plazo, el Gobierno de Costa Rica se compromete a no iniciar ninguna acción o reclamación internacional contra Nicaragua, ante dicha Corte, ni en ninguna otra instancia internacional, respecto de cualquier asunto o reclamación referidos a Tratados o Acuerdos actualmente vigentes entre ambos países.

4. Nada de lo aquí dispuesto podrá interpretarse o prejuzgarse como renuncia de posiciones, o renuncia o menoscabo alguno de los derechos que tiene y conserva cada una de las Partes de conformidad con los Tratados vigentes, dentro del marco del Derecho Internacional.

En fe de lo cual, firmamos, para su validez y eficacia inmediata, en la ciudad de Alajuela, República de Costa Rica, en dos textos originales, ambos en idioma español, igualmente válidos, a los veintiséis días del mes de setiembre del año 2002.

ROBERTO TOVAR FAJA
Ministro de Relaciones Exteriores y Culto
de la República de Costa Rica

E Bolaños G

NORMAN CALDERA CARDENAL
Ministro de Relaciones Exteriores de la
República de Nicaragua

DISPUTE CONCERNING NAVIGATIONAL AND RELATED RIGHTS

(COSTA RICA *v.* NICARAGUA)

MEMORIAL OF COSTA RICA

VOLUME 3

(Annexes 30 to 82)

29 August 2006

Annex 30

COSTA RICAN FOREIGN MINISTER, LORENZO MONTUFAR TO NICARAGUAN FOREICN MINISTER, TOMÁS AYÓN, 1 FEBRUARY 1870, REPRODUCED IN PEDRO PÉREZ ZELEDÓN, *ARGUMENT ON THE QUESTION OF THE VALIDITY OF THE TREATY OF LIMITS BETWEEN COSTA RICA AND NICARAGUA* (WASHINGTON : GIBSON BROS., 1887), PP. 274-278

ARGUMENT

ON THE QUESTION OF THE VALIDITY OF THE TREATY OF LIMITS BETWEEN COSTA RICA AND NICARAGUA

AND

OTHER SUPPLEMENTARY POINTS CONNECTED WITH IT,

SUBMITTED TO THE

Arbitration of the President of the United States of America,

FILED ON BEHALF OF THE GOVERNMENT OF COSTA RICA

BY

PEDRO PÉREZ ZELEDÓN,

ITS ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY
IN THE UNITED STATES.

(TRANSLATED INTO ENGLISH BY J. I. RODRIGUEZ.)

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1887.

No. 56.

Remarks made by the Government of Costa Rica to the Government of Nicaragua when the latter submitted to the Nicaraguan Congress its so-called doubts in regard to the validity of the treaty of limits of 1858.

[SEAL]. SAN JOSÉ, *February* 1st, 1870.

SIR: I have read with deep sorrow that part of the message addressed by Your Excellency to the Nicaraguan Congress, wherein the treaty of limits between Costa Rica and Nicaragua of April 15, 1858, is discussed.

That passage of Your Excellency's message reads literally as follows:

"Article II of the Constitution of November 12, 1838, which was the one in force at the time in which the treaty of limits was adjusted, declared that the territory of the State of Nicaragua was exactly the same as the territory which the Province of Nicaragua had been. This Province, before the independence, embraced the whole territory of Guanacaste.

"Article 194 provided that, for the amendment of or addition to any article of the Constitution, it should be required among other formalities that the said amendment or addition should be approved by the two-third vote of the Senators and Members present, and that, after securing this vote, neither the amendment nor the addition should be considered as forming a part of the Constitution, as all laws on limits are, until sanctioned by the next Legislature."

"The same formalities are established for similar cases by Article 103 of the present Constitution."

"The treaty of limits, in which Nicaragua, abrogating Article II of her Constitution, generously ceded to Costa Rica a large portion of territory, which she has possessed quietly, both before and after the independence, required for its validity to have been sanctioned by the next Legislature. It was approved by the Assembly of 1858; but that was not enough. It ought to have been approved, also, by the Congress of 1859, because the two Legislatures were considered by the Constitution as if they were two co-ordinate legislative bodies, the approval by the first being only of initiative character and lacking legal force without the approval of the second, exactly in the same way as the action of one Chamber in the enactment of a law means nothing if the other Chamber does not act accordingly."

"The said formality having been omitted, the treaty of limits lacks legal force, and therefore Costa Rica has no right to demand its execution, because, according to the principles of the law of nations, treaties are void and inoperative through the omission of any requisite which, according to the Constitution of the State, was necessary for its consummation."

"The Government of Costa Rica has acknowledged that this is the condition in which the above said treaty finds itself, because in Article VI of a convention made on the 12th of July, 1869, between the Plenipotentiaries Don Mariano Montealegre and Don A. Jimenez, about the cession of the waters of the Colorado river for the purpose that they should be thrown into the San Juan, a convention of which, in due time, I gave you the proper information, it asked Nicaragua to ratify the treaty of limits with Costa Rica, and to agree to submit to the arbitration of the Government of the United States of North America all questions arising out, either of the said treaty, or of the execution of the convention just spoken of."

"Costa Rica, in asking Nicaragua to ratify the treaty of limits in which the latter State ceded to the former a large extent of its territory as preliminary for allowing the waters of the Colorado river to be thrown into the San Juan, looked as if pretending that Nicaragua first should give it the whole thing, and subsequently take back a portion of it. It is useless to repeat here the obvious reasons which you had in view for rejecting the convention."

"In order to avoid perplexities in the course of this business, the Executive requests your Honorable Body to define well the rights of the Republic in the matter of limits with Costa Rica before undertaking works or devising plans for the improvement of its ways of communication on the northern side."

This grave subject being now under discussion in the Chambers of your Republic, I think it my duty to present to Your Excellency some remarks, and request that, if deemed proper, they be transmitted to the Congress of Nicaragua for their consideration.

The Constitution of your Republic, promulgated on the 12th of November, 1838, as Your Excellency yourself recognizes, did not say anywhere that the territory of Guanacaste was part of Nicaragua. It confined itself to indicate that the territory of the State was the same as belonged to it when a Province.

In reference to this I must state that Guanacaste, in the time of the Spanish Government, always was under the immediate jurisdiction and control of Cartago; and that the Spanish Cortes, when they promulgated the Constitution of 1812, decided that Guanacaste should be incorporated in Costa Rica for the purposes of electing deputies both for the Cortes and for the provincial deputation or assembly.

I must say further, that according to the charter of the Colony of Costa Rica, the King of Spain appointed Don Diego Artieda y Chirinos to be the first Governor and Captain-General of this Province, marking as limit for the same the San Juan river on the Atlantic.

But there are other conclusive reasons founded upon documents of subsequent date in support of the treaty of limits.

It was approved by the Government of Costa Rica and Nicaragua.

It was ratified by the Congresses of Costa Rica and Nicaragua.

The ratifications of the treaty were duly exchanged, and the treaty was promulgated in both Republics as the law of the land in regard to limits.

Thirteen years have elapsed since that publication, and all the Legislatures which have met during that period have looked at that treaty as the basis of the relations between both countries.

The Legislature of Nicaragua approved the treaty of peace and amity concluded on the 30th of July, 1868, taking for granted that the limits between both Republics were settled.

The present Constitution of Nicaragua, subsequent in date to the treaty, says, in its Article I, that the laws on limits make a part of the Constitution.

The treaty herein referred to is a Nicaraguan law on limits, and a law of the highest importance. Therefore it is an integral part of the Constitution of Nicaragua, according to its own literal language.

Under these circumstances, the august Chambers of your Republic would need, before declaring the treaty of limits to be invalid, to be invested with all the power which Your Excellency says to be indispensable to amend the Constitution of your country, in addition to all other circumstances prescribed by international law to invalidate a treaty signed, approved, ratified, exchanged, promulgated, and executed during 13 years.

Your Excellency refers to a project of Convention celebrated on the 21st of July, 1869, between the Plenipotentiaries Don Agapito Jimenez and Don Mariano Montealegre.

Article VI of the said project alluded to by Your Excellency says: "The Government of Nicaragua ratifies by this convention the treaties which it has celebrated in regard to limits with the Government of Costa Rica."

I do not understand what was the reason why the Costa Rican Plenipotentiary acceded to subscribe to such an article, included in a project which was relative to a matter entirely independent of all question of limits; but I understand very well that the said article does not prove at all that the treaty of limits is not valid.

Señor Montealegre, Plenipotentiary of Nicaragua, came to suggest that Costa Rica should allow the waters of the Colorado river to be carried into the San Juan.

He recognized the validity of the treaty of limits, and requested that the waters of the Colorado river be granted to his country, and the request was granted by the Costa Rican Plenipotentiary, who assented, furthermore, to the enactment of Article VI above copied.

But the said project of convention, including its Article VI, was not ratified by the Congress of this Republic; and, therefore, it has no more force and strength than if it were simply blank paper.

To have some right to argue against Costa Rica on the ground of the said convention, it would be necessary for the convention to have become a law, which never happened.

Now, by virtue of the discretionary faculties vested in the President, His Excellency has the power to ratify public treaties; but His Excellency has not only refused to ratify the convention referred to, but has been pleased besides to decree that it is invalid and void.

Be pleased to accept the consideration with which I have the honor to assure Your Excellency that I am your most attentive servant,

MONTUFAR.

To His Excellency THE MINISTER OF FOREIGN RELATIONS of
Nicaragua.

Annex 31

SECRETARY OF FOREIGN AFFAIRS OF COSTA RICA, ASCENSIÓN ESQUIVEL, TO SECRETARY OF STATE IN CHARGE OF THE FOREIGN AFFAIRS OF THE REPUBLIC OF NICARAGUA, FRANCISCO CASTELLÓN, 29 JUNE 1886, REPRODUCED IN *REPÚBLICA DE COSTA RICA : MEMORIA DE LA SECRETARÍA DE RELACIONES EXTERIORES Y CARTERAS ANEXAS* (SAN JOSÉ : IMPRENTA NACIONAL, 1887)

TRANSLATION

Republic of Costa Rica
Ministry of Foreign Affairs and Worship

N° D.M. 133-82

San José, June 8, 1982

Chargé d' Affaires, a.i.:

Mr. Angel Edmundo Solano Calderón, Minister of Public Security, yesterday forwarded to my office a complaint filed on the same date by the Manager of "SWISS TRAVEL SERVICE, S.A.", a Costa Rican company, stating that:

> "Yesterday, Sunday, June 6, while our boat was heading to Puerto Viejo with 10 tourists, it was intercepted by a Sandinista patrol, which forced all of our tourists to get off the boat, and show all their belongings. After arguing for several hours with the passengers and the boatman, they told our employee that he should notify our head office that as of yesterday, Costa Rican vessels were not allowed to pass through the San Juan River, specially with American and European tourists, like the ones that were in yesterday's tour."

The incident reported by Mrs. Gamboa is very serious because it affects the rights of free navigation on the San Juan River that are categorically and perpetually guaranteed for Costa Rica, and because it harms the economic interests of the country. Therefore, on behalf of the Government of Costa Rica, I am filing a protest before the Government of Nicaragua, for the above-mentioned incident, through Your Excellency. In addition, the Government of Costa Rica requests that the Government of Nicaragua takes the necessary and urgent actions to sanction the members of the patrol that incurred in that offence, and to prevent that such repudiable actions will happen again in the future.

I take this opportunity to reiterate to Your Excellency, the assurances of my highest and most distinguished consideration.

FERNANDO VOLIO JIMENEZ
Minister of Foreign Affairs and Worship

Honourable
Mr. Oscar Ramón Téllez
Chargé d' Affaires, a.i.:
Nicaraguan Embassy

exercise an evident right, and that said provisions do not affect either the rights or the interests of that Republic.

The treaty of April 15 of 1858 was celebrated after very extensive discussions on the limits between both Republics; the rights of each Republic were well known and had been claimed repeatedly; Costa Rica claimed its natural limits; the Cañas-Jerez treaty, by means of settlement, distanced Costa Rica from such claims and forced it to waive a considerable portion of the territory that it claimed to be its own. That convention was approved by the Legislative Body of Costa Rica and by a Constitutional Assembly of Nicaragua; their ratifications were exchanged in an extraordinary and solemn fashion as such exchange was verified by the President of Costa Rica and the President of Nicaragua assisted by their respective Secretaries of Foreign Affairs; the treaty was published as laws of both countries, and it was faithfully observed as such for a period of thirteen years, and during this time none of the Public Powers of Nicaragua ever expressed any fear about its invalidity. It was not until 1871 when the validity of this convention was cast to doubt by the Government of Your Excellency, alleging reasons that I do not deem convenient to challenge now. Since then, Costa Rica has affirmed and alleged that such convention is valid; but as our Governments were not able to come to an understanding on this matter, it was agreed to maintain the *status quo* at the Rivas conferences celebrated between the Presidents of both Republics. What should be understood by *status quo* in this case? Nicaragua has not defined it in a uniform manner; but Costa Rica has always alleged fairly enough that the *status quo* is not nor can it be other than the observance of the treaty of 1858.

Indeed, Minister, a convention does not cease to be valid by the simple fact that one of its parties claims its invalidity, and it is not appropriate to return to the old state of affairs only because one of the parties decides to question the legal existence of the treaty: this would equal to making effective an invalidity that is denied by one of the parties and to recognize the matter under discussion as true. Under the treaty of 1858, Costa Rica is in legitimate possession thereof, and as long as there is no judgment that annuls this document or provided that it is not dispossessed thereof, it may exercise acts of sovereignty of any kind on the territory attributed to it by the treaty and that territory has never ceased to be in its possession.

Furthermore, there are but only two solutions to this matter: either the possession prior to the treaty of 1858 is accepted, in which case Costa Rica would have the right to its natural limits along the banks of the lake and the San Juan river in all their extension, stretching up to the La Flor river, or the possession held by Costa Rica and Nicaragua after 1858 is respected in virtue of the treaty. It is true that Costa Rica has abode by the solution which least favours its interests but which is more in agreement with the fidelity and observance of public treaties.

It would be erroneous otherwise to affirm that Nicaragua has never defined the *status quo* as it is understood by Costa Rica; it has defined it in the aforementioned manner several times, although on some occasions, especially when the same issue of invalidity or validity of the convention has been discussed, it has made careful use of the vague phrase *status quo of the matter*. My Government could cite numerous communications and official documents issued by the Government of Nicaragua in which agreement is expressed for the *status quo* as defined by Costa Rica, which is only fair and logical. Among other matters, the letters of His Excellency Mr. Rivas of November 12 of 1874 and January 2 of 1875, both of which made claims against acts of this Government which purportedly exceeded the demarcation line of the treaty of limits, expressly recognized the *status quo* of the treaty. When in 1880 my Government proposed to Your Excellency that your Government put forth an initiative to terminate said treaty and to return to the previous state of affairs, Nicaragua made no objection in the sense of not recognizing the possession pursuant to the treaty; His Excellency Mr. Rivas himself was contented when he asked what is it that Costa Rica understood by the previous state of affairs, and implicitly recognized, therefore, that we were not in that previous state of affairs but in the state of affairs established by the treaty of limits.

Even if those documents did not exist, there is a formal and solemn recognition by Nicaragua of the *status quo*, just as Costa Rica has always so alleged. Article 5 of the treaty of January 19 of 1884 concerning the guarantee of dividend from the Canal and signed by Mr. Castro and Navas, the respective Plenipotentiaries of Costa Rica and Nicaragua, states: "It is understood that this covenant shall not affect at all the validity of the Cañas-Jerez Treaty, which Costa Rica claims, nor the *status quo* of the observance of said treaty celebrated by both Republics". Is a more genuine recognition desired? It is true that this treaty was never exchanged; but the *status quo* was not agreed upon then; it was mentioned as reference and as a fact alien to the treaty itself while taking for granted that both Republics had reached an agreement based on it.

As the *status quo* consists in the observance of the treaty of limits, evident as it is, Costa Rica has absolute possession over the Colorado, San Carlos and Sarapiquí rivers, which are and have always been Costa Rican rivers, in addition to the fact that Costa Rica has exclusive possession over the Colorado delta up to Punta de Castilla. Therefore, by establishing a guard [*resguardo*] at the mouth of that river and by allowing the foundation of a community on its left bank, Costa Rica has done nothing but to make use of its own territory and none of those measures may affect other party's rights.

As for the provision that allows a national vessel to run the course of the San Juan river in the section where that is navigable for Costa Rica, said provision is not unlawful with respect to the rights of that Republic either. It is true that the treaty of 1858 reserves to Nicaragua the full dominion over the waters of the San Juan river, but it is no less true that Costa Ricans, by virtue of the treaty, may navigate the river for commercial purposes, and that the Government of Costa Rica is entitled by the treaty to the same navigational rights with all kinds of vessels, for if it is to fulfil the obligation imposed on it and which it expressly recognizes of contributing to the custody and defence of the river in case of external aggression, it is clear that it has the right to make use of the indispensable means to comply with that duty. Furthermore, the vessel that is to navigate the San Juan shall limit itself to use the waters of the river to cross from one to the other Costa Rican river and it shall not exercise any jurisdictional act over them.

The foregoing considerations, Minister, leads this Government to believe in full conviction that the acts challenged by Your Excellency fall within the sphere of its rights; and as much as it would like to fully please Nicaragua and its illustrious Cabinet, it believes that on this occasion it must not accord the suspension of the said measures, because such suspension may lead to think that our rights are weak or that this Government distrusts the justice assisting it.

As per the proposal of Your Excellency requesting that the validity of the treaty of 1858 be submitted to arbitration, my Government, which has made the same proposal to your Government on several occasions, is willing to accept it and it accepts it with joy. Even more so, it believes that it is the duty of Costa Rica and Nicaragua to resolve this matter through conciliatory and friendly means, which are the only dignified means acceptable for cultivated and sister nations. Both nations must put and end to this cause of continuous disputes between Republics, the interest of both of which is to be in agreement as they share a common future. It also accepts with great pleasure that the President of the United States of America be the arbitrator in this matter, whose uprightness, knowledge and spirit of justice are trustworthy, and whom we expect not to decline to provide such kind of service to two nations of this continent that are sincere and fervent admirers of the United States.

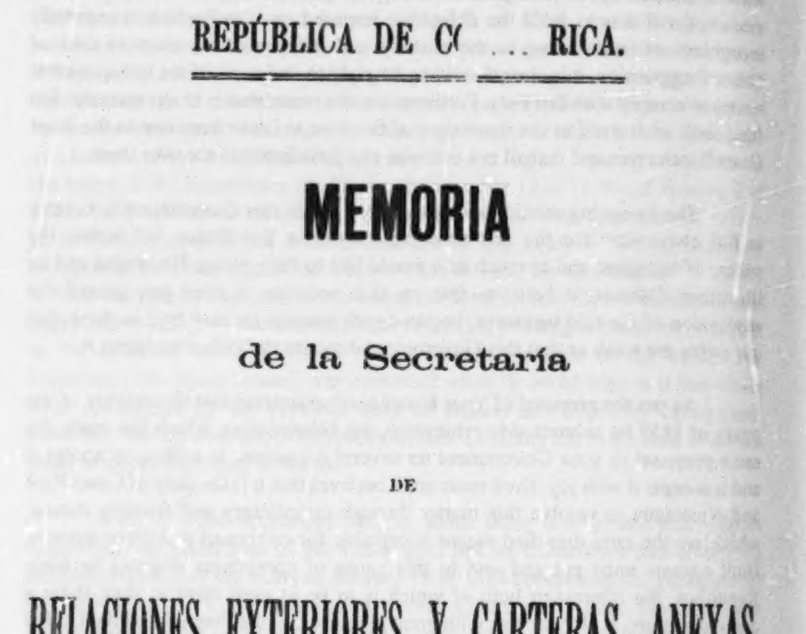
Having agreed on the matter that is to be submitted to arbitration and on the election of the arbitrator, the remaining details of the arbitration and the signing of the corresponding treaty shall be attended to subsequently. To this effect, my Government, eager to see the outcome of this matter, will hear with pleasure any suggestions that Your Excellency may wish to convey.

I avail myself of this opportunity to reiterate to your Excellency the assurances of my highest consideration.
Yours truly,

Ascención Esquivel

To His Excellency the Secretary of State in the
Foreign Affairs Office of the Republic of Nicaragua.

Managua



REPÚBLICA DE C[illegible] RICA.

MEMORIA

de la Secretaría

DE

RELACIONES EXTERIORES Y CARTERAS ANEXAS.

1887.

San José, Costa Rica.

IMPRENTA NACIONAL.

Palacio Nacional.

San José, 29 de junio de 1886.

Señor Ministro:

He tenido el honor de recibir el atento despacho de V. E., fechado el 5 del que corre. En él se sirve decirme V. E. que por "La Gaceta Diario Oficial" de esta República, se ha impuesto de los acuerdos de mi Gobierno, relativos al establecimiento de un resguardo en la boca del río Colorado, con facultad de recorrer el San Juan, Colorado, Sarapiquí y San Carlos, y á la fundación de una colonia en la margen izquierda del mismo Colorado. Agrega V. E. que, impugnado de inválido el tratado de límites de 15 de abril de 1858, y admitido el *statu quo* de la cuestion, ha debido esperarse que ninguna de las partes ejecute hechos que de algún modo lo modifiquen y la hagan aparecer resolviendo por sí; y que aun supuesta la validez del tratado, el acuerdo referente á que un vapor nacional navegue las aguas del San Juan, autoriza un acto no consentido por dicho tratado. Concluye V. E. proponiendo á este Gobierno que se someta al arbitramento de cualquiera de los Presidentes de los Estados Unidos de América, de los Estados Unidos Mexicanos, Chile ó la Confederación Argentina, la cuestión de validez del tratado Cañas-Jerez, y entre tanto, pide que se suspenda la ejecución de las dispósiciones aludidas.

Antes de responder á V. E. en lo principal, debo manifestarle que, al dictar esas providencias, mi Gobierno jamás previó que ellas pudieran producir mala impresión en el de V. E. Costa Rica está muy deseosa de conservar con su hermana Nicaragua la más sincera armonía y la cordialidad más perfecta, y con ese propósito, no habría vacilado en abstenerse de cualquier acto que en la medida de su previsión, hubiera podido despertar la añeja cuestión de límites, causa perenne de desacuerdo entre ambos pueblos. Guiado por el mismo espíritu de conciliación, mi Gobierno no tendría embarazo alguno en volver sobre sus pasos, si llegara á adquirir la más ligera duda acerca de la legitimidad y justicia de sus actos, ó si llegara á convencerse de que ellos vulneran un derecho ajeno ó violan una promesa ú obligación de Costa Rica.

Mas aunque mi Gobierno altamente deplora que los acuerdos mencionados encuentren objeción en el de V. E., está plenamente convencido de que al dictarlos no ha hecho más que ejercitar un derecho evidente, y que ellos en nada afectan ni los derechos ni los intereses de esa República.

El tratado de 15 de abril de 1358 fué celebrado después de larguísimas discusiones entre ambas Repúblicas, respecto de sus límites; se conocían muy bien y se habían alegado repetidamente los derechos de cada una; Costa Rica reclamaba sus límites naturales; el tratado Cañas-Jerez, por vía de transacción, la alejó de ellos y la hizo renunciar á una considerable porción del territorio que alegaba ser suyo; esa convención fué aprobada por el Cuerpo Legislativo de Costa Rica y por una Asamblea Constituyente de Nicaragua; sus ratificaciones fueron canjeadas de un modo extraordinario y solemne, pues verificaron el canje los dos Presidentes de Costa Rica y Nicaragua, asistidos de sus respectivos Secretarios de Relaciones Exteriores; se publicó el tratado como ley de ambos países, y por espacio de trece años fué fielmente observado como tal, sin que durante ese tiempo ninguno de los Poderes Públicos de Nicaragua llegara á expresar ningún temor acerca de su nulidad. No fué sino en 1871 cuando la validez de esa convención fué revocada á duda por el Gobierno de V. E., alegando razones qve no creo del caso combatir ahora. Costa Rica, desde entonces ha afirmado y sostenido que tal convención es válida; mas como no pudieron entenderse sobre ese punto nuestros dos Gobiernos, se convino desde las conferencias de Rivas, celebradas entre los Presidentes de ambas Repúblicas, en mantener el *statu quo*. ¿Qué debía entenderse por *statu quo* en este caso? Nicaragua no lo ha definido de un modo uniforme; pero Costa Rica siempre ha alegado, con sobrada justicia, que el *statu quo* no es ni puede ser otro que la observancia del tratado de 1858.

En efecto, señor Ministro, una convención no deja de ser válida por el simple hecho de que una de las partes reclame su nulidad, y no ha de volverse al estado antorior de cosas tan sólo porque de un lado llegue á ponerse en tela de juicio la existencia legal del tratado: eso equivaldría á dar efectos á una nulidad que una de las partes niega, y á reconocer como cierto lo que precisamente se discute. Costa Rica con el título de 1858 en la mano, se halla en posesión legítima, y mientras no haya una sentencia que anule ese documento ó mientras no sea desposeída, puede ejercer actos de soberanía, de toda especie, sobre el territorio que el tratado le atribuye y que nunca ha dejado de poseer.

Por otra parte, no hay más que dos soluciones posibles en este negocio: ó se acepta la posesión anterior al tratado de 1858, y en ese caso Costa Rica tendría derecho á sus límites naturales de las orillas del lago y de las del río San Juan en toda su extensión y podría llegar hasta el río La Flor, ó se respeta la posesión que han tenido Costa Rica y Nicaragua después de 1858, en virtud del tratado. Costa Rica se ha atenido, es verdad, á la solución que favorece menos sus intereses, pero á la que más de acuerdo se halla con la fidelidad y observancia de los tratados públicos.

Sería errado, por lo demás, afirmar que Nicaragua nunca ha definido el *statu quo* como Costa Rica lo entiende; lo ha definido así numerosas veces, annque en ocasiones, especialmente cuando se ha discutido el mismo pnnto de nulidad ó validez de la convención, ha hecho uso cuidadosamente de la frase vaga del *statu quo de la cuestión*. Mi Gobierno podría citar multitud de comunicaciones y documentos oficiales, emanados del de Nicaragua, en los cuales se asiente al *statu quo* tal como lo define Costa Rica y como es lógico y justo que sea. Fuera de muchas otras, las notas del Excmo. señor Rivas de 12 de noviembre de 1874 y 2 de enero de 1875, que reclamaban contra actos de este Gobierno, ejecutados, decíase, más allá de la línea que demarca el tratado de límites, expresamente reconocieron el *statu quo* del mismo tratado. Cuando en 1880 mi Gobierno propuso al de V. E. que se hiciera una iniciativa por parte del de V. E. á fin de rescindir el mencionado tratado y volver al estado que antes de él tenían las cosas, Nicaragua no hizo objeción alguna en el sentido de desconocer la posesión conforme al tratado; el mismo Excmo señor Rivas se contentó con preguntar qué entendía Costa Rica por el estado anterior de cosas, y reconoció implícitamente, por lo tanto, que no nos hallábamos en el estado anterior de cosas sino en el estado de cosas que arregló el tratado de límites.

Pero aun cuando no existieran esos documentos, hay un reconocimiento formal y solemne, de parte de Nicaragua, del *statu quo* tal como lo ha alegado siempre Costa Rica. En el tratado de 19 de enero de 1884, relativo á garantizar dividendo del Canal, firmado entre los señores Castro y Navas, Plenipotenciarios respectivamente de Costa Rica y Nicaragua, se dijo en el artículo 5º: "Es entendido que este pacto no debe afectar en nada el tratado Jerez-Cañas cuya validez sostiene Costa Rica, ni el *statu quo* de la observancia de dicho tratado en que están convenidas ambas Repúblicas". ¿Se quiere un reconocimiento más ingenuo? Verdad es que ese tratado no llegó á canjearse; pero el *statu quo* no se convenía entonces, se habló de él por referencia, como de un hecho extraño al mismo tratado, y dando por sentado que sobre él estaban ya convenidas ambas Repúblicas.

Si pues el *statu quo* consiste en la observancia del tratado de límites, como es de toda evidencia, Costa Rica tiene absoluta propiedad en los ríos Colorado, San Carlos y Sarapiquí, que son y han siempre sido ríos costarricenses, y le pertenecen además exclusivamente el delta del Colorado hasta la Punta de Castilla. Por lo tanto, al establecer un resguardo en la boca de ese río y al permitir que se funde una población en su margen izquierda, Costa Rica no ha hecho más que disponer para su propio territorio, y ninguna de esas medidas puede vejar derechos ajenos.

En cuanto al acuerdo que dispone que un buque nacional recorra el San Juan en la parte que es navegable para Costa Rica, tampoco es atentatorio contra los derechos de esa República. Cierto que el tratado de 1858 reserva á Nicaragua el sumo imperio sobre las aguas del San Juan; pero no lo es menos que los costarricenses, en virtud de él, pueden navegar en el río para objetos de comercio, y que el Gobierno de Costa Rica tiene, por el mismo tratado, igual derecho de navegación con toda clase de naves, pues si se le impone la obligación, que expresamente reconoce, de concurrir á la guarda del río y á su defensa en caso de ataque exterior, es claro que tiene derecho de emplear los medios indispensables para llenar ese deber. Por otra parte, el vapor que ha de recorrer el San Juan se limita á usar las aguas del río para pasar de uno á otro de los ríos costarricenses, y no ejercerá en ellas acto alguno jurisdiccional.

Las consideraciones expuestas, señor Ministro, traen al ánimo de este Gobierno la plena convicción de que los actos que impugna el de V. E. se hallan dentro del círculo de sus derechos; y por más que desea complacer en todo á Nicaragua y á su ilustrado Gabinete, estima que en este caso debe no acordar la suspensión de tales medidas, porque de esa suspensión podría deducirse que nuestros derechos son débiles ó que este Gobierno desconfía de la justicia que le asiste.

En cuanto á la proposición de V. E. de que se someta á arbitramento el punto de validez del tratado de 1858, mi Gobierno, que en ocasiones numerosas ha hecho igual oferta al de V. E., está dispuesto á aceptarla y la acepta con júbilo. Aun más, cree que es un deber de Costa Rica y Nicaragua el poner, por esa vía conciliadora y amigable, la única digna de pueblos cultos y hermanos, punto final á esa causa de continuas contiendas entre Repúblicas á quienes tanto interesa marchar de acuerdo y á quienes el porvenir reserva una suerte común. Acepta asimismo con sumo agrado que sea árbitro de la cuestión el señor Presidente de los Estados Unidos de América, en cuya rectitud, ilustración y espíritu justiciero tiene absoluta confianza, y de quien es de esperar que no se negará á prestar este bondadoso servicio á dos naciones de este continente, amigas sinceras y fervientes admiradoras de los Estados Unidos.

Convenidos, pues, sobre el punto que ha de someterse á arbitramento y sobre elección de árbitro, sólo faltaría arreglar los demás detalles del arbitraje y firmar el tratado correspondiente. A ese efecto, mi Gobierno, deseoso de llegar cuanto antes al desenlace de este asunto, oirá con placer todas las indicaciones que quiera hacerle V. E.

Aprovecho esta oportunidad para renovar á V. E. las seguridades de distinguida consideración con que me suscribo su atento y obsecuente

servidor.

Ascensión Esquivel.

A S. E. el señor Secretario de Estado en el despacho de
Relaciones Exteriores de la República de Nicaragua.

Managua.

Annex 32

NICARAGUAN FOREIGN MINISTER, FRANCISCO CASTELLÓN, TO COSTA RICAN FOREIGN MINISTER, ASCENSIÓN ESQUIVEL, 3 AUGUST 1886, REPRODUCED IN *REPÚBLICA DE COSTA RICA : MEMORIA DE LA SECRETARÍA DE RELACIONES EXTERIORES Y CARTERAS ANEXAS* (SAN JOSÉ : IMPRENTA NACIONAL, 1887)

TRANSLATION

Ministry of Foreign Affairs
Republic of Nicaragua

Managua, 3 August 1886

SIR:

This Ministry has the honour of having received the letter Your Excellency addressed to me, dated 29th June, in reply to my letter of the fifth of the same month, in which, with respect to certain stipulations issued by the Government of that Republic concerning the waters and territories of the San Juan and Colorado Rivers, a proposal was put forward to submit the long-standing question of the validity of the treaty of 1858 – on which the two Republics have not managed to reach a satisfactory agreement – to arbitration; and it is requested, in the fraternal and positive interests of Nicaragua and Costa Rica, that the execution of the said regulations be suspended in order to avoid the repetition of a debate that, without, to date, having resulted in any outcome whatsoever, could disrupt the harmony between the two States.

Your Excellency informs me that your Government has not the least doubt as to the legitimacy and fairness of these acts, and that they do not violate any right whatsoever, or any of Costa Rica's promises or obligations, and that it cannot, therefore, undo any of these measures, despite its spirit of conciliation, and it regrets this Republic's objection since it believes it has exercised an evident right which in no way affects the rights or interests of Nicaragua.

In support of the fairness of these acts, Your Excellency refers extensively to the question of the validity of the treaty of 1858, and the significance that should be afforded the *status quo* agreed upon.

Your Excellency promptly accepts, on behalf of your Government, the proposal to submit the validity of the said treaty to the arbitral decision of the President of the United States, who is one of those which I had the honour of putting the proposal to, with the authorization of this Government.

The President of this Republic was surprised to learn that Costa Rica refuses to suspend the execution of the measures I have mentioned above, and has instructed me to make it known to that Government that he regrets to inform he is not convinced by the force of Your Excellency's arguments.

I find myself in possession of abundant copies of arguments against the validity of the treaty of 1858, to refute Your Excellency's arguments, and that are in favour of the intelligence Nicaragua has afforded the *status quo* agreed upon; however, Your Excellency must excuse me for not putting them forward for now, on account of the fact that this would, no doubt, fail to lead to any outcome, and it would be more appropriate to bring them before the arbiter.

The navigation on San Juan waters of a Costa Rican national steamship carrying armed forces of that Republic – the verification of which this Government finds particularly surprising – following my aforementioned letter of 5th June, is an outright violation of Nicaragua's sovereign rights, and cannot be justified by invoking a treaty the validity of which is being questioned, and that, even if it were valid, would not be authorized except when, in a given case, as with all alliances, Nicaragua would require Costa Rica to comply with the right, stipulated therein, to concur to its guard and defence.

The President, therefore, demands Your Excellency's Government withdraw the abovementioned steamship from the waters of the San Juan.

In regard to the other measures, the President believes they all disturb the *status quo* admitted by both Governments. This *status quo* has never meant the legitimate or perfect possession of one of the parties of the disputed territory; since, by its very nature, and, according to that which has been understood to date, it should consist of both abstaining from undertaking acts that they had not previously undertaken. The setting up of other guards [*resguardos*] could, perhaps, be judged not a new act since Costa Rica has previously had others at different points of the disputed territory; however, it is worth bearing in mind that Nicaragua has always protested against the existence of these guards [*resguardos*], and, moreover, that the matter is now one of establishing a community and a port. Once the matter is in the process of being submitted to arbitration, following the consent of both Governments, the President believes that reconsidering all these measures and agreeing to suspend their execution in no way compromises Costa Rica's interests.

And trusting that that Government shall willingly attempt to overcome the obstacles its measures provoked, in the honourable resolution of the matters pending, and in accordance with Your Excellency's insinuation that I expound the intentions of my Government as to the preliminaries of the arbitration, at the request of the President, I submit the following for Your Excellency's consideration:

1°.- The arbitrator shall resolve the question of the validity of the treaty of 1858, signed by both Republics, in view of the arguments put forward to him by each one in support of their rights.

2°.- Should the arbitrator declare that the treaty is valid, he shall also resolve the issue of the interpretation which should be made of the clauses that give rise to doubt, the clarification of which may be required by either of the two Governments.

3°.- Should the arbitrator declare that the treaty is void, he shall be required to establish the limits between the two Republics, based on the documents and claims presented.

4°.- The request which should be made to the President of the United States of America for his acceptance of the position of arbitrator, and the manner and presentation of the claims and documents shall be agreed upon at the Convention held for this purpose.

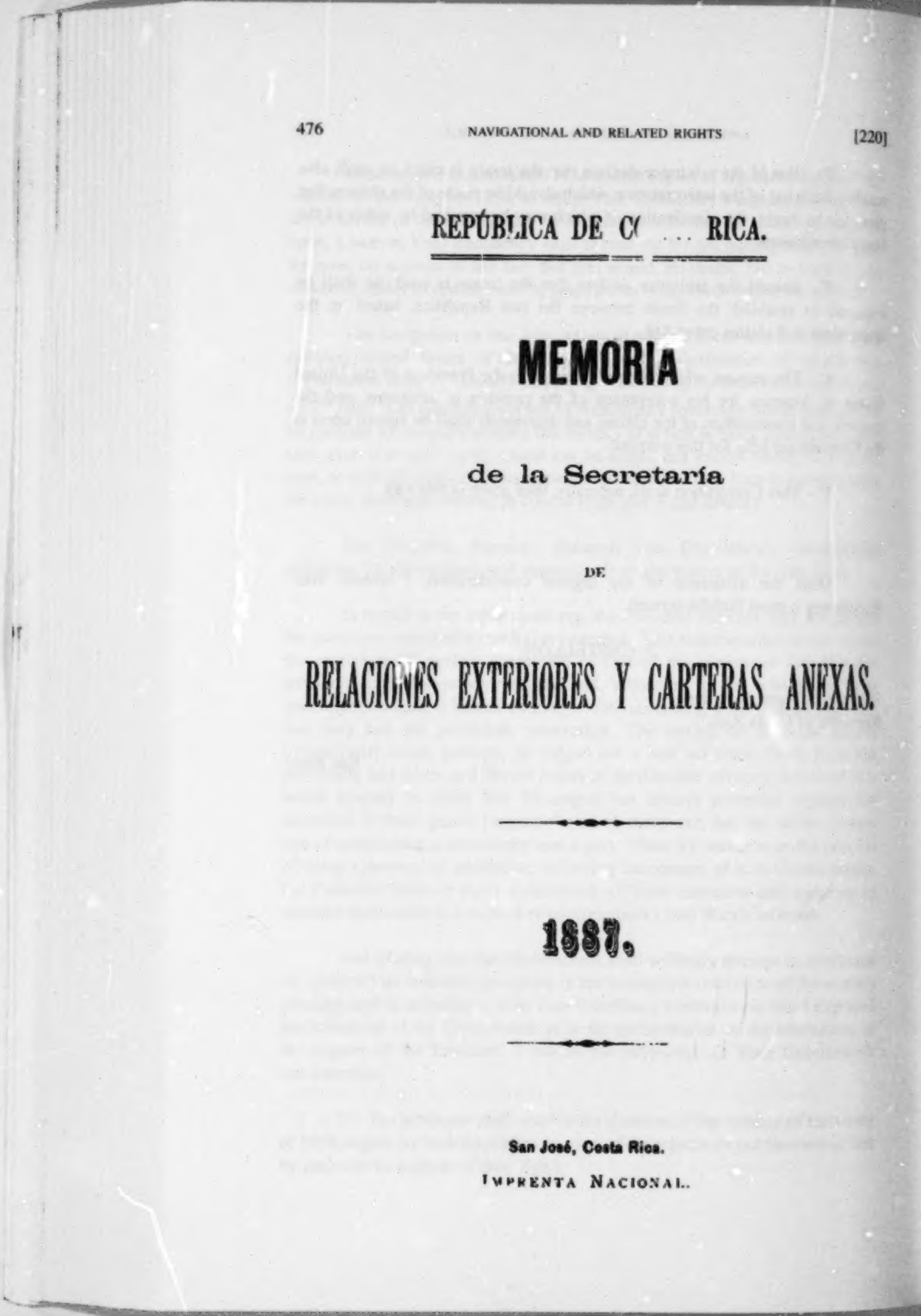
5°.- This Convention shall, naturally, take place in this city.

With the assurance of my highest consideration, I remain Your Excellency's most faithful servant.

F. CASTELLON

Minister of Foreign Affairs
Republic of Costa Rica

San Jose.



REPÚBLICA DE C[illegible] RICA.

MEMORIA

de la Secretaría

DE

RELACIONES EXTERIORES Y CARTERAS ANEXAS.

1887.

San José, Costa Rica.
Imprenta Nacional.

Ministerio de Relaciones Exteriores
de la República de Nicaragua.

Managua, 3 de agosto de 1886.

SEÑOR:

Se ha recibido en este Ministerio la nota que V. E. me hizo el honor de dirigirme con fecha 29 de junio próximo pasado, en contestación á la mía de cinco del mismo mes, en la cual, con ocasión de algunas disposiciones dictadas por el Gobierno de esa República, relativamente á las aguas y territorios del San Juan y el Colorado, se le propone someter á arbitramento la antigua cuestión de la validez del tratado de 1858, respecto de la que no han logrado las dos Repúblicas llegar á un arreglo satisfactorio; y se le pide, finalmente, en nombre de la amistad y del interés positivo de Nicaragua y Costa Rica, quo suspenda la ejecución de dichas disposiciones, á fin de evitar que se repita una discusión que, sin haber conducido hasta ahora á resultado alguno, pudiera turbar la armonía entre los dos Estados.

V. E. me manifiesta que su Gobierno no abriga ni la más ligera duda acerca de la legitimidad y justicia de esos actos, y de que ellos no vulneran derecho alguno, ni violan promesa ú obligación de Costa Rica, y que no le es posible, por lo mismo, volver sobre sus pasos, á pesar del espíritu de conciliación que le anima, deplorando que sean objetados por el de esta República, pues con ellos considera haber ejercido un derecho evidente, que en nada afecta ni los derechos ni los intereses de Nicaragua.

En apoyo de la justicia de esos actos, V. E. considera extensamente la cuestión de la validez del tratado de 1858, y la significación que debe darse al *statu quo* convenido.

En seguida V. E. acepta, en nombre de su Gobierno, la proposición de someter la validez de dicho tratado á la decisión arbitral del señor Presidente de los Estados Unidos, que es uno de los que tuve el honor de proponerle con autorización de este Gobierno.

El señor Presidente de esta República ha visto con sorpresa que Costa Rica se niegue á suspender la ejecución de las medidas á que me he referido, y me ha instruído para manifestar á ese Gobierno, que tiene la pena de no poder convencerse de la fuerza de las razones alegadas por V. E.

Para refutar la argumentacióu de V. E., me hallo en posesión de abundante copia de argumentos contra la validez del tratado de 1858, y en favor de la inteligencia que por parte de Nicaragua se ha dado al *statu quo* convenido; pero V. E. debe excusarme de aducirlos por ahora, en consideración á que eso seguramente no conduciría á ningún resultado, y sería más oportuno alegarlos ante el árbitro.

La navegación de un vapor nacional costarricense en aguas del San Juan, con fuerza armada de esa República, hecho que, con particular extrañeza de este Gobierno se ha verificado, después de mi nota de 5 de junio antes aludida, es una violación manifiesta de los derechos soberanos de Nicaragua, y no puede justificarse invocando un tratado cuya validez está en cuestión, y que, aun válido, no lo autorizaría sino cuando, llegado el caso, como sucede respecto de toda alianza, Nicaragua requiriese á Costa Rica para que cumpliera el deber que él estipula, de concurrir á su guarda y defensa.

Por tanto, el señor Presidente reclama del Gobierno de V. E. que retire el referido vapor de las aguas del San Juan.

En orden á las otras medidas, considera el señor Presidente que todas ellas alteran el *statu quo* admitido por ambos Gobiernos. Ese *statu quo* no ha podido nunca significar la posesión legítima ó perfecta de una de las partes, del territorio disputado; pues, por su naturaleza, y, según se ha entendido hasta ahora, debe consistir en que ambas se abstengan del ejercicio de actos que anteriormente no hayan ejercido. Pudiera quizás juzgarse qse el establecimiento de otros resguardos no es un acto nuevo, desde que, antes de ahora, Costa Rica ha tenido otros en algunos puntos del territorio disputado; pero conviene no olvidar que Nicaragua ha protestado siempre contra la existencia de esos resguardos, y que hoy se trata además del establecimiento de una población y puerto. Una vez que la cuestión está en vía de someterse á la decisión de un arbitro por consentimiento de ambos Gobiernos, piensa el señor Presidente que el de Costa Rica en nada compromete sus intereses ni su honra reconsiderando todas esas medidas y acordando que se suspenda su ejecución.

Y en la confianza de que ese Gobierno se prestará gustoso á allanar los obstáculos que sus providencias suscitan á la honrosa solución de las cuestiones pendientes, y correspondiendo á la insinuación de V. E. para que le exponga las indicaciones que mi Gobierno tenga á bien hacer respecto á preliminares del arbitraje, de orden del señor Presidente, someto á la consideración de V. E. las bases siguientes:

1ª—El árbitro resolverá sobre la validez del tratado de 1858, celebrado entre ésta y esa República, en vista de los alegatos que ambas le presenten en apoyo de su derecho.

2ª—En caso de que el árbitro declare que el tratado es válido, resolverá también sobre la interpretación que deba darse á las cláusulas que den lugar á duda y cuya aclaración reclame cualquiera de los dos Gobiernos.

3ª—Si el árbitro declarase que el tratado es nulo, le corresponderá señalar los límites entre las dos Repúblicas, con vista de los documentos y alegatos que ellas aduzcan.

4ª—La solicicitud que deba dirigirse al señor Presidente de los EE. UU. de América para su aceptación del cargo de árbitro, y el modo y forma de la presentación de alegatos y documentos, se arreglarán en la Convención que se celebre al efecto.

5ª—Esa Convención se ajustará desde luego en esta ciudad.

Con muestras de la más alta consideración, me suscribo de V. E. su más atento y seguro servidor.

F. CASTELLÓN.

A S. E. el señor Ministro de Relaciones
Exteriores de la República de Costa Rica.

San José.

Annex 33

SECRETARY OF FOREIGN AFFAIRS OF COSTA RICA, ASCENSIÓN ESQUIVEL TO SECRETARY OF STATE IN CHARGE OF THE FOREIGN AFFAIRS OF THE REPUBLIC OF NICARAGUA, FRANCISCO CASTELLÓN, 19 AUGUST 1886, REPRODUCED IN *REPÚBLICA DE COSTA RICA : MEMORIA DE LA SECRETARÍA DE RELACIONES EXTERIORES Y CARTERAS ANEXAS*
(SAN JOSÉ : IMPRENTA NACIONAL, 1887)

TRANSLATION

Secretariat of Foreign Affairs
of the Republic of Costa Rica

National Palace

San Jose, 19 August 1886.

Dear Minister:

I am honoured to have received Your Excellency's letter of the 2nd of the current month, in addition to issue No. 618 of the *Nicaraguan Daily (El Diario Nicaraguense)* attached, which published a letter of the past 12 June from Mr. Peralta, the Costa Rican Minister in Washington, addressed to Judge Daly.

Your Excellency declares that this letter contains statements that are markedly contrary to the truth and to Nicaragua's rights, and puts forward views that my Government has never upheld and that would hinder the planned inter-oceanic canal; and thus wishes to know if the aforementioned letter is authentic and in accordance with ideas and instructions issued by my Government.

In order to satisfy Your Excellency's wishes, I should inform you that, although it was not following the orders or by special instruction of my Government, Mr. Peralta did, in effect, write a letter to Mr. Daly – a copy of the text in English is annexed – regarding the project of the incorporation of the Nicaraguan maritime Canal Company. I would not be fulfilling my duty with the openness and sincerity that should prevail over our mutual relations if I did not add that Mr. Peralta's letter merits the approval of my Government, since, having studied it in detail, I find nothing in it that could be considered markedly false, nor does it claim rights that the Government of Costa Rica has not defended beforehand. The main purpose of this letter, which can be easily gathered on reading it, is to draw to the attention of the company's members, before doing so to the Senate, the fact that Costa Rica constitutes a necessary part of any company that is set up in order to build an inter-oceanic canal through the San Juan River. This declaration is not new, and far from being contradicted, has been widely recognized by the Government of Nicaragua. Your Excellency is aware that by historical titles and in accordance with public treaties, Costa Rica is riparian of the San Juan River; is co-owner with Nicaragua in the *San Juan del Norte* bay and has the perpetual right of navigation along the aforementioned river; and thus, Mr. Peralta, on appealing against the lack of knowledge regarding our rights in the bill brought before the Senate and the House of Representatives of the United States of America by Mr. Edmunds and Mr. Viele respectively, has merely fulfilled his duty and followed general instructions.

This declaration, which forms the main body of the letter, is, without doubt, not that which Your Excellency describes as markedly false, since Costa Rica's right to participate in the planned canal has, as already mentioned, been recognized on several occasions by Your Excellency's Government. I presume that expression refers to the phrase in which Mr. Peralta states that Costa Rica is sovereign to almost three quarters of the canal line, and that it is the *measurement* the Costa Rican Minister uses to refer to our rights that concerns Your Excellency.

Before explaining the meaning of this phrase, which is certainly vague, I feel obliged to inform Your Excellency that it is not the intention of my Government to have more territorial rights, on Nicaragua's side, than those granted it by the treaty of 15 April 1858, the validity of which it upholds, and that, as long as this Convention is not invalidated, shall regulate our participation in the canal. The part which corresponds to Costa Rica in this enterprise cannot be determined beforehand with mathematical precision; it will increase or decrease depending on the direction the line takes; however, in order to establish the latter the part of the Costa Rican territory which the canal or its annexes will occupy should be taken into account, in addition to the rights that Costa Rica will have to renounce in favour of the company or as a result of the canal.

This candid declaration on my Government's part would render the discussion on the measurement Mr. Peralta uses to refer to our rights futile; however, I feel obliged to explain his words, which, if misinterpreted, could lead to the error of assuming my Government is claiming more than that which belongs to it. It must naturally be pointed out that Mr. Peralta does not say that Costa Rica is sovereign to three quarters of the canal line, nor that it is exclusively so. Nonetheless, since Costa Rica is sovereign to the right bank of the San Juan River from its mouth up to three miles before reaching Castillo Viejo, in other words, almost three quarters of its length; and as a canal company would require land on both sides of the line and may occupy, as with the concession granted in the Zaval-Frelinghuysen treaty, large stretches of Costa Rican land along the length of the river and the lake, that is, along more than three quarters of the canal's length, it could be said, in all fairness, that Costa Rica has rights along almost three quarters of the canal line.

That is the true meaning of the phrase used by Mr. Peralta; he did not, and could not, say that three quarters of the canal belong to Costa Rica; he states, and is right in doing so, that Costa Rica must have joint ownership, and this is why he adds that Costa Rica should be involved in the enterprise "with the same rights as Nicaragua and certainly with more direct interest than the United States". If Mr. Peralta had believed that Costa Rica's interest or right in the canal could be estimated at three quarters of the same, or even at more than half, he would have said that it *has more rights* than Nicaragua to intervene in the concession. Mr. Peralta was referring to rights to the canal line and not to proportional participation in the company.

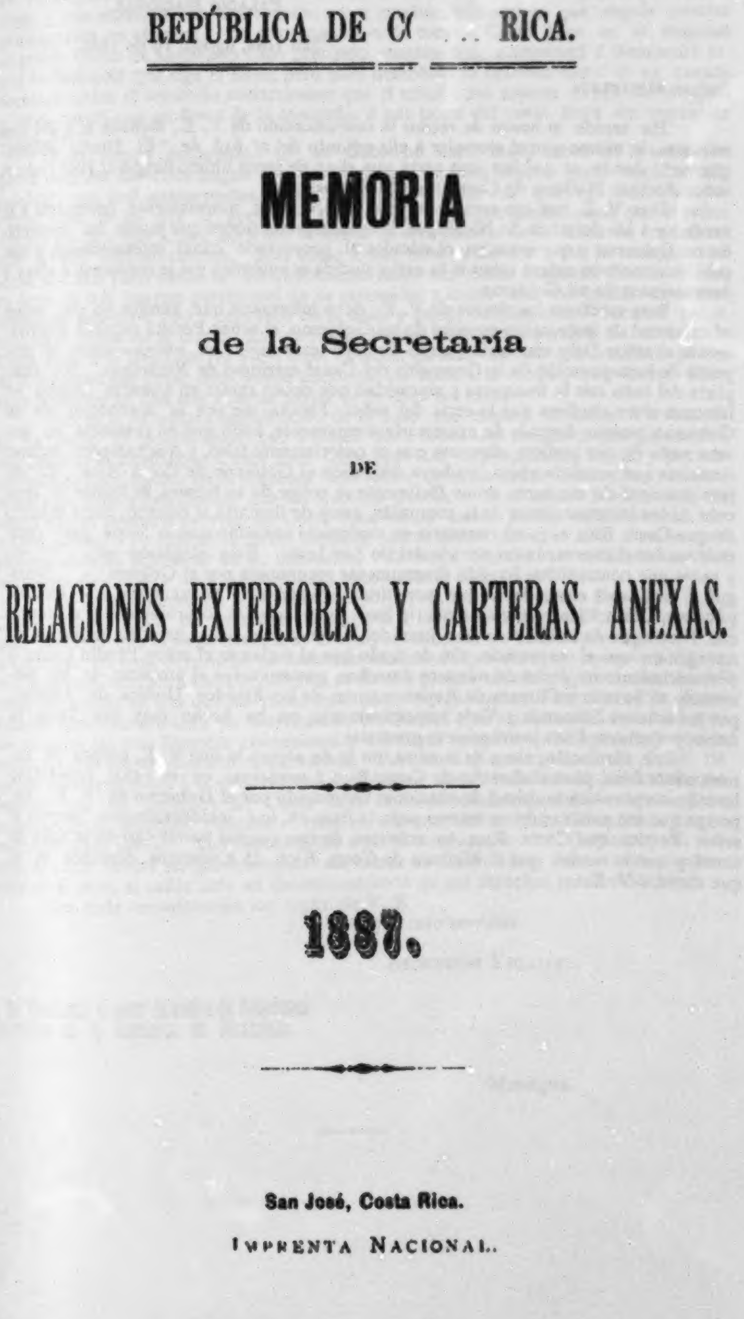
Having clarified this point, I must insist on a comment made by Your Excellency: Costa Rica is not trying to hinder the undertaking of the planned canal, nor is it correct to assume that it should do so since the opening of the same would greatly benefit it. On the contrary, it has always shown keen interest that this major project of such vital importance to Central America should be carried out promptly; and its interest is such that it did not hesitate, recently, to guarantee, along with the other Central American States, a fixed dividend, and it would, for its part, now make the most liberal concessions and grant ample privileges to any company willing to undertake its construction. However, one must not confuse the wish to oppose inconveniences to the enterprise with my Government's duty to not allow Costa Rica's rights to not be duly taken into account, and to defend those rights when claims are made to Costa Rican soil without its prior consent. It would be as inconceivable, on the one hand, for my Government to act against what is evidently in Costa Rica's favour, as it would be, on the other hand, for it to remain silent when its obvious rights are clearly ignored.

I remain Your Excellency's most faithful servant,

Ascension Esquivel.

To His Excellency
The Minister of Foreign Affairs of the
Republic of Nicaragua

Managua.



REPÚBLICA DE C[illegible] RICA.

MEMORIA

de la Secretaría

DE

RELACIONES EXTERIORES Y CARTERAS ANEXAS.

1887.

San José, Costa Rica.
IMPRENTA NACIONAL.

**Secretaría de Relaciones Exteriores
de la República de Costa Rica.**

PALACIO NACIONAL.

San José, agosto 19 de 1886.

SEÑOR MINISTRO:

He tenido el honor de recibir la comunicación de V. E., fechada el 2 del mes en curso, lo mismo que el ejemplar á ella adjunto del nº 618 de "El Diario Nicaragüense", donde se publica una carta que el 12 de junio último dirigió al Juez Daly el señor Peralta, Ministro de Costa Rica en Wáshington.

Dice V. E. que esa carta contiene afirmaciones notoriamente contrarias á la verdad y á los derechos de Nicaragua, y avanza pretensiones que jamás ha sustentado mi Gobierno y que crearían obstáculos al proyectado canal interoceánico; y que por esos motivos quiere saber si la carta aludida es auténtica y si se conforma á ideas é instrucciones de mi Gobierno.

Para satisfacer los deseos de V. E., debo informarle que, aunque no por orden ni en virtud de instrucción especial de mi Gobierno, el señor Peralta escribió efectivamente al señor Daly una carta—copia de cuyo texto inglés vá anexa—sobre el proyecto de incorporación de la Compañía del Canal marítimo de Nicaragua. No cumpliría del todo con la franqueza y sinceridad que deben reinar en nuestras mutuas relaciones si no añadiera que la carta del señor Peralta merece la aprobación de mi Gobierno, porque después de examinarla atentamente, hallo que en sustancia no asevera nada de que pudiera afirmarse que es notoriamente falso, y que tampoco reclama derechos que antes de ahora, no haya defendido el Gobierno de Costa Rica. El objeto principal de esa carta, como fácilmente se colige de su lectura, es llamar la atención de los incorporadores de la compañía, antes de llamarla al Senado, hacia el hecho de que Costa Rica es parte necesaria en cualquiera sociedad que se forme para construir un canal interoceánico por vía del río San Juan. Esta alegación no es nueva, y antes que contradicha, ha sido diversamente reconocida por el Gobierno de Nicaragua. V. E. está enterado de que por títulos históricos y de acuerdo con tratados públicos, Costa Rica es ribereña del río San Juan; que es copropietaria y comunera con Nicaragua de la bahía de San Juan del Norte y que tiene derecho perpetuo de navegación en el expresado río; de modo que al reclamar el señor Peralta contra el deconocimiento implícito de nuestros derechos, que envuelve el proyecto de ley presentado al Senado y Cámara de Representantes de los Estados Unidos de América, por los señores Edmunds y Viele respectivamente, no ha hecho más que llenar su deber y ajustarse á sus instrucciones generales

Esta afirmación, alma de la carta, no es de seguro la que V. E. califica de notoriamente falsa, pues el derecho de Costa Rica á participar en el canal proyectado ha sido—repito—en multitud de ocasiones reconocido por el Gobierno de V. E. Supongo que esa calificación se reserva para la frase en que incidentalmente asegura el señor Peralta que Costa Rica es soberana de tres cuartas partes casi de la línea de canal, y que la *medida* que el Ministro de Costa Rica dá á nuestros derechos es lo que choca á V. E.

Antes de explicar el sentido de esta frase, realmente vaga, debo anticipar á V. E. que mi Gobierno no pretende hoy tener más derechos territoriales, por el lado de Nicaragua, que los que le confiere el tratado de 15 de abril de 1858, cuya validez alega, y que mientras esta Convención no se invalide, ella será la que regule nuestra participación en el canal. La parte que haya de tocar á Costa Rica en la empresa no puede fijarse de antemano con precisión matemática; aumentará ó disminuirá según la dirección que siga la línea; pero para determinarla deberán tomarse en cuenta necesariamente el territorio costarricense que el canal ó sus anexos hayan de ocupar, y los derechos que en favor de la compañía ó por causa del canal haya de renunciar Costa Rica.

Esta franca declaración de mi Gobierno haría inútil hablar de la extensión que á nuestros derechos asigna el señor Peralta; pero debo hacerlo para explicar sus palabras, que mal interpretadas, podrían conducir al error de que mi Gobierno reclama más de lo que le pertenece. Es preciso advertir desde luego, que el señor Peralta no dice que Costa Rica sea soberana de tres cuartos de la línea de canal, ni que lo sea exclusivamente. Mas como Costa Rica es soberana de la margen derecha del San Juan desde su desembocadura hasta tres millas abajo del Castilo Viejo, es decir en tres cuartas partes casi de su extensión; y como una compañía de canal necesitará terreno á uno y otro lado de la línea y puede ocupar, como sucedía en la concesión hecha en el tratado Zavala-Frelinghuysen una gran extensión de tierras de Costa Rica á lo largo del río y del lago, es decir, en más de las tres cuartas partes de la longitud del canal, bien puede afirmarse, sin faltar á la verdad, que Costa Rica tiene derechos en casi tres cuartas partes de la línea del canal.

Esa es la verdadera significación de la frase que emplea el señor Peralta; él no ha dicho ni podría decir que á Costa Rica tocan tres cuartas partes del canal; asegura y es lo cierto, que Costa Rica tiene que ser copropietaria de él, y por eso agrega que debe figurar en la empresa "con tanto derecho como Nicaragua y ciertamente con interés más directo que los Estados Unidos". Si el señor Peralta hubiera creido que el interés ó derecho de Costa Rica en el canal podrá estimarse en tres cuartas partes, ó en más de la mitad siquiera, habría dicho que *con más derecho* que Nicaragua debía intervenir en la concesión. El señor Peralta se refirió á derechos en la línea de canal, y no á participación proporcional en la empresa.

Hecha esta necesaria aclaración, me permitiré insistir sobre una frase de V. E. Costa Rica no trata de presentar obstáculos á la práctica del proyectado canal, ni cabe suponer que lo haga desde que la apertura de él ha de beneficiarla tanto. Por el contrario, en toda ocasión se ha mostrado ansiosa de que obra tan magna y de tan vital trascendencia para Centro América se lleve á pronto término; y se halla de tal modo interesada en ella que no vaciló hace poco en garantizar junto con los otros Estados Centroamericanos un determinado dividendo, y se apresuraría ahora á hacer por su parte las más liberales concesiones y á otorgar amplios privilegios á cualquier compañía que emprendiera su construcción. Pero no hay que confundir el deseo de oponer inconvenientes á la empresa con el deber en que se halla mi Gobierno de no permitir que los derechos de Costa Rica dejen de tomarse en debida cuenta, y de protestar esos derechos cuando se trata de disponer del suelo de Costa Rica, sin su consentimiento previo. Tan inconcebible sería la conducta de mi Gobierno, en un caso, al obrar contra las conveniencias más claras de Costa Rica, como sería censurable en el otro, al callar ante un desconocimiento de sus derechos más evidentes.

Con toda consideración me repito de V. E.

muy atento servidor.

Ascensión Esquivel.

A Su Excelencia el señor Ministro de Relaciones Exteriores de la República de Nicaragua.

Managua.

Annex 34

COSTA RICAN FOREIGN MINISTER, ASCENSIÓN ESQUIVEL, TO NICARAGUAN FOREIGN MINISTER, FRANCISCO CASTELLÓN, 31 AUGUST 1886, REPRODUCED IN *REPÚBLICA DE COSTA RICA : MEMORIA DE LA SECRETARÍA DE RELACIONES EXTERIORES Y CARTERAS ANEXAS* (SAN JOSÉ : IMPRENTA NACIONAL, 1887)

TRANSLATION

Foreign Affairs Secretariat
Republic of Costa Rica

National Palace

San Jose, 31 August 1886

Dear Minister:

I am honoured to have received the letter Your Excellency addressed to me, dated the 3rd of the current month, in which you comment on my letter of the twenty ninth of June, in addition to proposing some guidelines for the arbitration Convention on the validity of the treaty of 1858.

Since, on the thirtieth of July, Your Excellency informed me of your Government's fervent wish that powers and instructions be sent to the Consul General of Costa Rica in that Republic, in order to hasten an agreement on the difficulties pending, and to be sooner able to reach an agreement on the grounds of the arbitration Convention; and, since, on the 31st of the same month I promised Your Excellency, as per your instructions, that sufficient powers and instructions would be promptly sent to the said Consul General by post for him to deal with Your Excellency's Government, my own Government believed that the matters that had arisen between us, regarding the measures whose suspension is required, as well as the bases for the arbitration, would be reserved in their entirety for the Plenipotentiaries of the two Republics.

My Government, which, following the exchange of telegrams, had no reason to believe that that of Your Excellency should honour it with your letter of reply, deems it unnecessary to respond to each and every point of your abovementioned communication since Mr. Viquez already has instructions for discussing all those Your Excellency proposes with the Government of Nicaragua; however, as Your Excellency's letter contains interpretations that are so at variance with those which Costa Rica considers its legitimate rights, and such an unacceptable theory concerning what should be understood as the *status quo* agreed upon by both Republics, I consider it important to not waste this opportunity, at the risk of incurring in excessive repetition, to declare that which legally corresponds to Costa Rica.

Your Excellency states that the *status quo* has never represented lawful or perfect possession of the disputed territory by one of the parties since, given its nature, and according to that which has been understood to date, it should consist in both abstaining from carrying out acts that they had not formerly undertaken; and that, in view of the intelligence, on Nicaragua's part, afforded the *status quo*, Your Excellency finds himself in possession of an abundance of arguments.

I consider it my duty to inform Your Excellency that Costa Rica has never accepted any such an interpretation of the *status quo*; that it has, on the contrary, always claimed that the *status quo* has been and is no more than the observance of the treaty of limits; and that, in authentic documents issued by its Government, Nicaragua itself has, on more than one occasion, agreed with the intelligence that Costa Rica affords it.

The *status quo* defined by Your Excellency has never existed, nor was it a possibility for Costa Rica, nor is it in keeping with the nature of things. Allow me to make the following comments that disprove Your Excellency's theory.

Prior to 1858 Costa Rica and Nicaragua disputed their respective limits as sovereign and independent States; sometimes by means of direct negotiations, other times through commissioners granted full powers, others when our Governments attempted to reach an agreement regarding the dividing line between our two countries; a huge amount of letters were exchanged and many treaties were signed; however, all this was fruitless. Nonetheless, negotiations in the year 1858 were more successful, and both Governments signed, ratified and exchanged the Convention of 15th April; that occasion was one of genuine jubilation for both Republics; the exchange of ratifications was an event of great solemnity – a clear indication of how pleased the two Governments were to have concluded a matter which had, on more than one occasion, soured their mutual relations, and that the previous year was on the verge of provoking a war. Costa Rica claimed propriety rights on a territory that was even more extensive than that which the treaty had assigned her; however, in the interests of mutual harmony, with the amicable mediation of El Salvador, and in keeping with a praiseworthy spirit of reconciliation, she agreed to renounce part of her rights and settle for the line established in the Convention. Costa Rica believed this line to be definitively agreed upon, and the cause of the conflict – in whose defence the blood of her sons had just been spilt –over with once and for all.

Costa Rica and her Government were, therefore, naturally very surprised when, after a period of thirteen years during which the dividing Convention had been abided by as common law between both States, the Government of Nicaragua raised doubts as to its validity. Costa Rica, who had signed it underplaying that which rightfully belonged to her and in order to avoid cause for unrest, could not agree to the nullity of the treaty and to rekindling a dispute that it believed to have been resolved without appeal, and, since 1871, due to Costa Rica's refusal to agree to the nullity, the validity, but only the validity of the treaty, has been called into question: the matter of the limits themselves has not been reawakened, and it cannot, therefore, be said, as long as the Convention is not annulled, that there is *disputed territory* between Costa Rica and Nicaragua. Should the treaty of limits be invalidated, either by mutual consent of both Governments or through the decision of an arbitrator, then the issue of limits shall be taken up once more; in the meantime, the limits are those established by the treaty. To expect otherwise would be to expect Costa Rica, whilst denying and combating the nullity of the treaty, to agree to its effects.

The position of both Republics is perfectly clear. Nicaragua, for reasons I do not consider it appropriate to discuss, claims the nullity of a treaty concluded with its due formalities, and, despite it having been law for a long period of time and of having all the characteristics of a legitimate act, requests that it be denied its effects until a judgment does not declare it valid. Costa Rica, on the other hand, abides by a public treaty that merits being considered authentic and worthy of respect, especially of the signatories, and that has formed and continues to form part of its national legislation, and, logically, demands that it be abided by and maintained as long as a judgment does not declare it null and void.

With regard to the two countries' situation from 1858 to 1871, allow me, Your Excellency, to point out that Nicaragua was the owner of the territories it was assigned in the treaty of 15th April and that it exercised all sovereign acts *in posse* over them: this was also true of Costa Rica, with respect to the territories assigned her: both could set up control points, found colonies, navigate the rivers, etc., etc., etc. By virtue of what principle are the sovereign acts, which were not executed *in facto* by Costa Rica and Nicaragua until 1871, no longer allowed to be exercised, only because Nicaragua claimed the treaty was null and void at that time? What doctrine can be presented, what antecedent could be put forward in support of so strange an interpretation of the *status quo*? In similar or comparable cases, the natural thing would be for the situation to remain the same as it was at the time the matter arose; the very meaning of the words *status quo* say so in no uncertain terms. Thus, if, in the year 1871, Costa Rica and Nicaragua had no impediment to exercising their sovereignty over the respective territories, it is clear that neither is this the case after 1871.

Once again, I must declare that after 1858 there is no territory whatsoever in dispute between the two States, and, hence, there is no reason to restrict their sovereignty over any part of their territory; or is it Nicaragua's intention that new acts of sovereignty over the territory in dispute prior to 1858 should not be exercised? I do not believe this is Nicaragua's intention, since, on this basis, Costa Rica could demand that Nicaragua shall not execute any act of sovereignty that she would not have executed prior to 1871 over the territory between the La Flor River and the line drawn from Sapoa to the central point of the Salinas bay, nor over the two-mile strip south of the lakesides and San Juan River that, according to the treaty, belongs to her, nor over half of the San Juan River etc., etc., since all these territories were disputed prior to 1858.

Your Excellency claims, furthermore, that the *status quo* has never meant legitimate or perfect possession of the disputed territory; however, even if it is assumed that Your Excellency is referring to territory disputed prior to 1858, does this mean that neither of the two countries have legitimate or perfect possession of the said territories?, or that the two countries may jointly exercise acts of sovereignty over them?, or that one of the two may exercise certain acts and the other may not? All these solutions are unacceptable: it is not, in fact, possible for those territories to no longer be under the sovereignty of the two States, nor that they be subjected to the joint sovereignty of both.

In short, Minister, I find myself obliged, once more, to insist, Your Excellency, that Costa Rica does not accept any *status quo* other than that observed by the treaty of limits of 15th April 1858.

My Government does not wish to let the opportunity pass of responding to another point in Your Excellency's letter. Your Excellency states that the navigation of a Costa Rican national steamship carrying armed forces of this Republic along the waters of the San Juan River is a clear violation of Nicaragua's sovereign rights, and that it cannot be justified by citing a treaty whose validity is being questioned, and that, even if it were valid, does not authorize it except if, as in any alliance, Nicaragua should require Costa Rica to comply with its duty, which the former stipulates, to guard and defend the said river.

It seems futile to me to insist on the fact that the treaty of 1858 may not be considered null and void until a judgment has so declared it, and I, therefore, hardly need to tell you that Costa Rica considers all the rights and obligations stipulated in the treaty definitive and valid. Having made this assertion, I should add that Costa Rica has the perpetual right to navigate the San Juan River, or part of it, in accordance with the treaty: that it is obliged, and naturally so, to guard and defend the river, since it has the use of its waters, and because a part of its right bank belongs to it, because the river is the common entry to both Republics, and it is in the direct interests of both to defend it: that, given this obligation, Costa Rica may use the necessary means to fulfil it and it may, for the same reason, navigate the river in any kind of vessel: that, in order to do so, Costa Rica does not require Nicaragua's approval or request, since it would not be acting as Nicaragua's ally but in the exercising of its own right:

and that, should the opposite occur, Costa Rica would be left totally defenceless at Nicaragua's will.

The grounds Your Excellency proposes for the arbitration convention have already been, and continue to be evaluated by the commissioners of both Governments; however, despite the fact that that of Costa Rica has already given full instructions to his plenipotentiary and leaves him in charge of dealing with Your Excellency's Government, I should point out to Your Excellency that Costa Rica does not consider it acceptable to submit the matter of limits to the decision of the arbitrator at this time, as long as no judgment has been passed to annul the treaty of 1858.

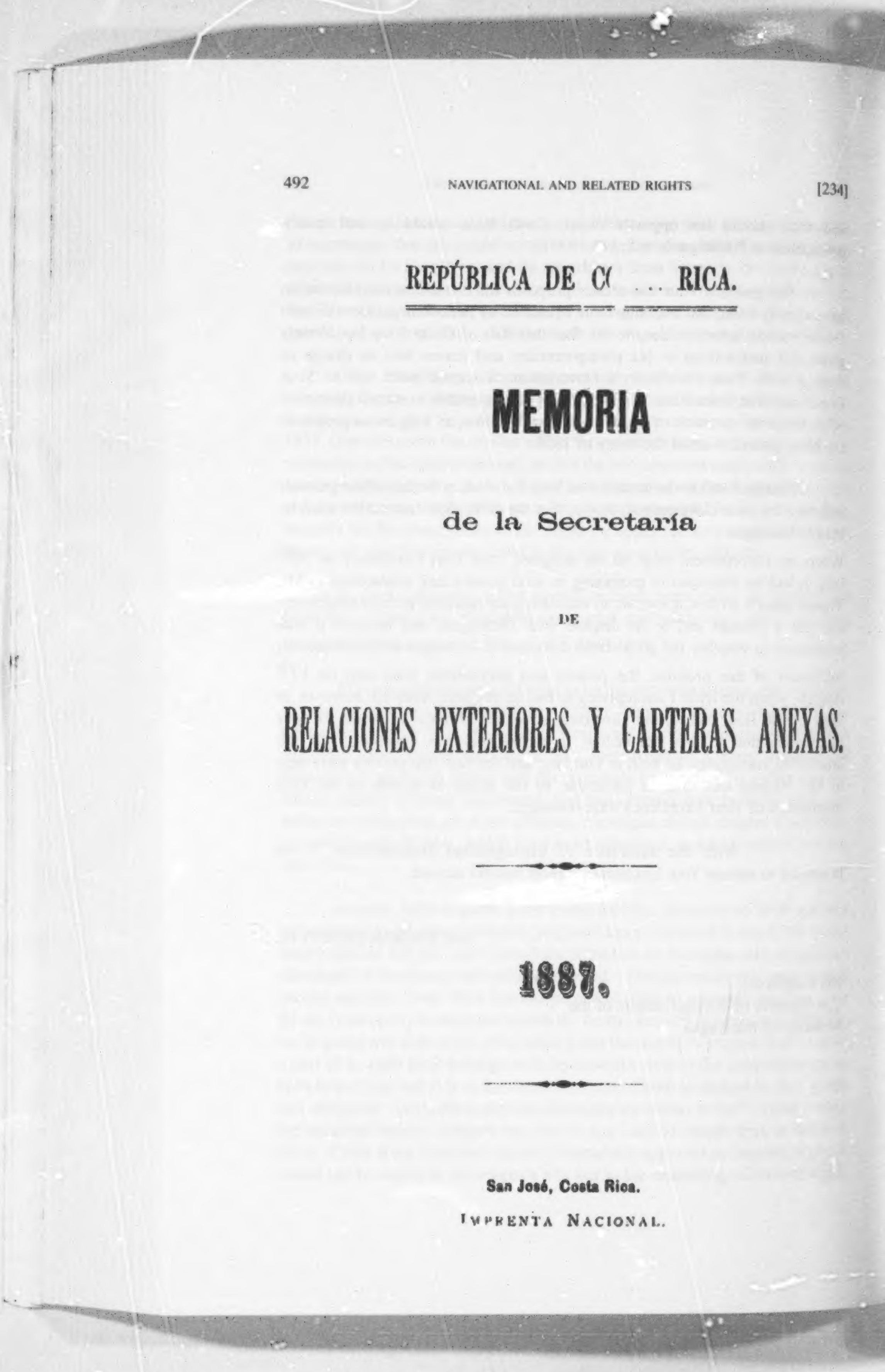
Finally, I call to the attention of Your Excellency the last of the grounds indicated by your Government, that is, that the arbitration convention must be held in Managua.-

When my Government received the telegram from Your Excellency on 30th July, it had no objection to promising to send powers and instructions to Mr. Viquez since it wishes, above all, to maintain good relations with its neighbours and put a prompt end to its dispute with Nicaragua, and because it was indifferent to whether the grounds be discussed in Managua or elsewhere. In fulfilment of this promise, the powers and instructions were sent on 10th August, when the letter I am replying to had no yet been received; however, in view of the final clause, my Government wishes to make it known to Your Excellency that it does not accept, as a *sine qua non* condition, that the arbitration convention be held in that city; and the fact that powers were sent to Mr. Viquez was due, in particular, to the desire to accede to the kind insinuation of Your Excellency's Government.

With the assurance of distinguished consideration, I am honoured to remain Your Excellency's most faithful servant.

ASCENSION ESQUIVEL

His Excellency
The Minister of Foreign Affairs of the
Republic of Nicaragua



REPÚBLICA DE C[illegible] RICA.

MEMORIA

de la Secretaría

DE

RELACIONES EXTERIORES Y CARTERAS ANEXAS.

1887.

San José, Costa Rica.
IMPRENTA NACIONAL.

Secretaría de Relaciones Exteriores
de la República de Costa Rica.

PALACIO NACIONAL.

San José, 31 de agosto de 1886.

SEÑOR MINISTRO:

He tenido el honor de recibir la comunicación de V. E., fechada el 3 del mes que termina, en la cual se sirve hacer observaciones á mi nota de 29 de junio último y proponer algunas bases para la Convención de arbitraje sobre validez del tratado de 1858.

Como el 30 de julio anterior, V. E. me indicó el vivo deseo de su Gobierno de que se enviaran poderes é instrucciones al Cónsul General de Costa Rica en esa República, á fin de hacer más expedito el arreglo de las dificultades pendientes, y de poder llegar más pronto á un acuerdo sobre las bases de la Convención arbitral, y como el 31 del mismo mes prometí á V. E., correspondiendo á su indicación, que por el correo más próximo se remitirían al dicho señor Cónsul General, poderes é instrucciones bastantes para que se entendiera con el Gobierno de V. E., esperaba el mío que las cuestiones suscitadas entre ambos, con motivo de las medidas cuya suspensión ha sido solicitada, y las bases del arbitramento se reservarían en un todo á los Plenipotenciarios de las dos Repúblicas.

Mi Gobierno que, después de los telegramas cruzados, no tenía motivo para esperar que el de V. E. lo favoreciera con la nota que contesto, cree innecesario responder punto por punto á su referida comunicación, pues el señor Víquez tiene ya instrucciones para tratar con el Gobierno de Nicaragua todos los que V. E. propone; mas como la nota de V. E. contiene apreciaciones tan opuestas á lo que Costa Rica estima sus legítimos derechos, y una teoría tan inaceptable acerca de lo debe entenderse por el *statu quo* convenido entre ambas Repúblicas, juzgo importante no dejar pasar esta ocasión, aun á trueque de incurrir en demasiadas repeticiones, para reclamar lo que de justicia corresponde á Costa Rica.

Asegura V. E. que el *statu quo* nunca ha podido significar posesión legítima ó perfecta del territorio disputado, por una de las partes, pues por su naturaleza y según se ha entendido hasta ahora, debe consistir en que ambas se abstengan del ejercicio de actos que anteriormente no hayan ejercido; y que en favor de la inteligencia que, por parte de Nicaragua, se ha dado al *statu quo*, V. E. se halla en posesión de abundante copia de argumentos.

De mi deber estimo anticipar á V. E. que Costa Rica jamás ha aceptado una interpretación tal del *statu quo*; que siempre alegó, por el contrario, que el *statu quo* no ha podido ser, ni es otra cosa que la observancia del tratado de límites; y que la misma Nicaragua, en documentos auténticos emanados de su Gobierno, más de una vez, ha asentido á la inteligencia que Costa Rica le da.

El *statu quo* que V. E. define nunca ha existido ni era posible para Costa Rica, ni se conforma con la naturaleza de las cosas. Para desvirtuar la teoría de V. E., permítame que haga las siguientes consideraciones.

Antes de 1858 disputaban Costa Rica y Nicaragua sobre cuáles eran sus respectivos límites como Estados soberanos é independientes; por medio de negociaciones directas unas veces, por medio de comisionados revestidos de plenos poderes otras, trataron nuestros Gobiernos de llegar á entenderse acerca de la línea divisoria entre los dos países; se cruzaron multitud de notas, se firmaron muchos tratados; mas todo fué infructuoso. Sin embargo las negociaciones, el año 1858, tuvieron mejor éxito, y ambos Gobiernos firmaron, ratificaron y canjearon la Convención de 15 de abril; aquella ocasión fué motivo de legítimo júbilo para las dos Repúblicas; el canje de las ratificaciones se verificó con un lujo de solemnidades que revelaba bien á las claras cuánto complacía á los dos Gobiernos el ver terminada una cuestión que había muchas veces agriado sus mutuas relaciones, y que el año anterior había estado á punto de provocar una guerra. Costa Rica alegaba derechos de propiedad sobre un territorio más extenso aún que el que el tratado le asignó; pero en busca de la armonía recíproca, por acceder á la mediación amistosa del Salvador, y obedeciendo á un espíritu de conciliacion merecedor de todo encomio, consintió en renunciar á parte de sus derechos y en conformarse con la línea fijada en la Convención. Esa línea creyóla Costa Rica definitivamente acordada, y concluída para siempre esa causa de contiendas con Nicaragua, en cuya defensa acababa de derramar la sangre de sus hijos.

Muy justa fué, pues, la sorpresa de Costa Rica y su Gobierno cuando, al cabo de trece años durante los cuales la Convención divisoria se había observado como ley común de ambos Estados, el Gobierno de Nicaragua despertó dudas acerca de su validez. Costa Rica, que la había suscrito amenguando lo suyo y para desprenderse de esa causa de intranquilidad, no podía consentir en la invalidez del tratado y en revivir una disputa que creía resuelta sin recurso, y desde 1871, debido á la negativa de Costa Rica á consentir la nulidad, se ha cuestionado acerca de la validez, pero sólo acerca de la validez del tratado: la cuestión de límites misma no ha sido revivida, y por lo tanto no puede decirse, mientras la Convención no se anule, que hay *territorio disputado* entre Costa Rica y Nicaragua. Si por mutuo consentimiento de ambos Gobiernos ó por el efecto de un laudo arbitral, el tratado de límites se invalidara, entonces surgiría de nuevo el punto de límites; entre tanto, los límites son los que el tratado señala. Pretender otra cosa sería pedir que Costa Rica, al mismo tiempo que niega y combate la nulidad de la Convención, consintiera en los efectos de ella.

La posición de ambas Repúblicas es bien clara. Nicaragua alega, por motivos que no creo oportuno discutir, la nulidad de un tratado concluído con las debidas formalidades, y pide que, á pesar de haber sido ley por un largo lapso de tiempo y de tener todos los caracteres de un acto legítimo, se le prive de sus efectos mientras una sentencia no lo declare válido. Costa Rica, al revés, se atiene á un tratado público que merece fe y respeto, especialmente entre los firmantes, y que ha sido y sigue siendo parte de su derecho nacional, y exige, como es lógico, que se observe y mantenga mientras una sentencia no lo declare nulo.

En cuanto á la situación de los dos países desde 1858 hasta 1871, observo á

V. E. que Nicaragua era dueña de los territorios que le asignó el tratado de 15 de abril y que sobre ellos ejercía *in posse* todos los actos de su soberanía: igual cosa sucedía á Costa Rica sobre los territorios que se le fijaron: ambas pudieron establecer resguardos, fundar colonias, navegar los ríos, etc., etc., etc. ¿En virtud de qué principio se pretende hoy que los actos de soberanía que *in facto* no ejecutaron Costa Rica y Nicaragua hasta 1871, no los pueden ejercer ya, tan sólo porque Nicaragua reclamó entonces la nulidad del tratado? ¿Qué doctrina pudiera presentarse, qué antecedente pudiera exhibirse en apoyo de tan extraña interpretación del *statu quo*? Lo natural en casos semejantes ó análogos es que las cosas se mantengan como estaban al suscitarse la cuestión; la misma significación de las palabras *statu quo* lo dice terminantemente. Así, pues, si el año 1871 Costa Rica y Nicaragua no tenían impedimento para ejercer su soberanía sobre los respectivos territorios, es claro que tampoco lo tienen después de 1871.

Repito que después de 1858 no hay territorio ninguno en disputa entre los dos Estados, y que por lo mismo no cabe restringir la soberanía de ellos sobre parte alguna de su territorio; ó ¿es que pretende Nicaragua que no pueden ejercerse actos nuevos de soberanía sobre el territorio que estuvo en disputa antes de 1858? Esto me parece que no es la conclusión á que quiere llegar Nicaragua, pues en virtud de ella Costa Rica podría exigir que Nicaragua no ejecute acto alguno de soberanía, que antes de 1871 no hubiera ejercido, sobre el territorio comprendido entre el río La Flor y la línea que ha de trazarse desde el Sapoa hasta el punto céntrico de la bahía de Salinas, ni sobre la faja de dos millas que le pertenece, según el tratado, al sur de las riberas del lago y río San Juan, ni sobre la mitad del río San Juan etc., etc., porque todos estos territorios fueron disputados antes de 1858.

Asegura además V. E. que el *statu quo* nunca ha podido significar posesión legítima ó perfecta del territorio disputado; pero aun suponiendo que V. E. se refiera á territorio disputado antes de 1858, ¿quiere decir esto que ninguno de los dos países tiene la posesión legítima ó perfecta de tales territorios, ó que los dos países pueden ejercer conjuntamente actos de soberanía sobre ellos, ó que el uno de los dos puede ejercer un género de actos y el otro no? Cualquiera de estas soluciones es inaceptable: no es posible, en efecto, que esos territorios dejen de estar bajo la soberanía de los dos Estados; ni que estén sometidos á la soberanía conjunta de ambos.

En conclusión, señor Ministro, me veo obligado á repetir á V. E. que Costa Rica no admite otro *statu quo* que la observancia del tratado de límites de 15 de abril de 1858.

Otro punto de la nota de V. E. desea mi Gobierno no dejar pasar sin contestación. Afirma V. E. que la navegación de un vapor nacional costarricense en aguas del San Juan, con fuerza armada de esta República, es una violación manifiesta de los derechos soberanos de Nicaragua, y que no puede justificarse invocando un tratado cuya validez se cuestiona y que, aun válido, no lo autorizaría sino cuando, llegado el caso, como sucede respecto de toda alianza, Nicaragua requiriese á Costa Rica para que cumpliera el deber que él estipula de concurrir á la guarda y defensa de dicho río.

Inútil me parece insistir sobre el hecho de que el tratado de 1858 no puede considerarse nulo mientras una sentencia así no lo declare, y es excusado decir, por lo tanto, que Costa Rica reputa firmes y valederos todos los derechos y obligaciones que el tratado consigna. Sentada esta premisa, debo agregar que Costa Rica tiene el derecho perpetuo de navegar en el San Juan, ó en parte de él, de acuerdo con el tratado: que está obligada, y es natural que se la obligara á concurrir á la guarda y defensa del río, porque tiene el uso de sus aguas, porque una parte de su margen derecha le pertenece, porque el río es la entrada común á ambas Repúblicas, y ambas deben defenderlo por interés directo: que, dada esa obligación, Costa Rica puede valerse de los medios indispensables para cumplirla y puede, por lo mismo, navegar el río con toda clase de naves: que para hacerlo, Costa Rica no necesitaría de la aquiescencia ni requerimiento de Nicaragua, puesto que obraría, no como aliada de Nicaragua, sino en ejercicio de un derecho propio; y que si lo contrario sucediera, Costa Rica quedaría en completo estado de indefensión á voluntad de Nicaragua.

Las bases que V. E. propone para la convención arbitral han sido ya debatidas y continúan siendo objeto de examen entre los comisionados de ambos Gobiernos; mas á pesar de que el de Costa Rica ha dado ya instrucciones completas á su plenipotenciario y deja á su cargo el entenderse con el Gobierno de V. E., debo declarar á V. E. que Costa Rica no cree aceptable someter desde ahora á la decisión del árbitro el punto de límites, porque para Costa Rica no existe cuestión alguna sobre límites, mientras no recaiga una sentencia anulativa del tratado de 1858.

Para terminar, llamo la atención de V. E. á la última de las bases indicadas por su Gobierno, ó sea, que la convención de arbitraje ha de ajustarse en Managua.—Cuando mi Gobierno recibió el telegrama de V. E. de 30 de julio, no tuvo inconveniente en prometer que enviaría poderes é instrucciones al señor Víquez, porque quiere, antes que todo, conservar buena armonía con sus vecinas y poner pronto término á sus disputas con Nicaragua, y porque le era indiferente que las bases se discutieran en Managua ó en cualquier otro punto. Cumpliendo tal promesa, sa enviaron los poderes á instrucciones el 10 de agosto, cuando aun no se había recibido la nota que contesto; mas en vista de dicha cláusula final, mi Gobierno desea hacer presente al de V. E., que no acepta como condición *sine qua non*, para celebrar la convención arbitral, el ajuste de ella en esa capital; y que el hecho de enviar poderes al señor Víquez fué debido especialmente al deseo de acceder á la atenta insinuación del Gobierno de V. E.

Con protestas de distinguida consideración tengo la honra de repetirme de V. E. atento seguro servidor,

ASCENSIÓN ESQUIVEL.

A Su Excelencia el señor Ministro de Relaciones
Exteriores de la República de Nicaragua.

Managua.

Annex 35

SECRETARY OF STATE IN CHARGE OF THE FOREIGN AFFAIRS OF THE REPUBLIC OF NICARAGUA, FRANCISCO CASTELLÓN, TO SECRETARY OF FOREIGN AFFAIRS OF COSTA RICA, ASCENSIÓN ESQUIVEL, 18 OCTOBER 1886, REPRODUCED IN *REPÚBLICA DE COSTA RICA : MEMORIA DE LA SECRETARÍA DE RELACIONES EXTERIORES Y CARTERAS ANEXAS* (SAN JOSÉ : IMPRENTA NACIONAL, 1887)

TRANSLATION

Ministry of Foreign Affairs
Nicaragua

Managua, 18 October 1886

Sir:

I am honoured to have received Your Excellency's letter of 19th August, in reply to mine of 2nd June of the same month, which refers to the letter Mr. Peralta, the Costa Rican Minister in Washington, addressed to Judge Daly on12th June of the current year.

In my letter I stated that that of Mr. Peralta contains statements that are markedly contrary to the truth and to Nicaragua's rights, and that it puts forward views that the Government of Costa Rica has never upheld and that would hinder the planned inter-oceanic canal; and I requested that Your Excellency confirm whether the aforementioned letter is authentic and in accordance with ideas and instructions issued by your Government.

Your Excellency informs me that the letter is genuine and, as proof of this, you sent me a copy of the original text in English, assuring me that, although it was not written following the orders or special instructions issued by your Government, it has its approval, since, after having studied it in detail, it finds nothing that may be described as markedly false; nor does it claim rights that have not been previously defended by the Government of Costa Rica; and that Mr. Peralta, therefore, *has merely* fulfilled his duty and followed general instructions.

Your Excellency goes slightly further than Mr. Peralta and declares that my Government has, on several occasions, recognized Costa Rica's right to participate in the planned canal, as a necessary part of the negotiation; immediately offering a rational explanation of Mr. Peralta's claim that Costa Rica is sovereign to three quarters of the canal line, a claim you presume is that which has shocked my Government, and which Your Excellency describes as *certainly vague*.

My Government certainly did not expect that of Your Excellency to reply to my abovementioned letter of the 2nd in the terms in which it has done so, giving its full approval to the statements made by Mr. Peralta, which are as new to the history of the matter causing unrest between Nicaragua and Costa Rica as they are contrary to all past records of the same.

It is not just the assertion that Costa Rica is sovereign to almost three quarters of the canal line that has shocked my Government. This is perhaps that which has least drawn its attention, since, as it is lacks any basis whatsoever, it is totally inconceivable: it is the entire contents of the letter; it is the claim – that the treaty of 1858 does not justify, even if we presume, without admitting as much, that it is fully in effect – that Costa Rica is a necessary part of any concession, contract, rights, obligations and joint control of the canal, with the same rights as Nicaragua, that has caused genuine surprise.

What has made Mr. Peralta make such a claim on Costa Rica's behalf? On what basis does Your Excellency's Government give its full approval to this claim?

The source of the rights claimed by Costa Rica to the territory adjacent to the bay and the San Juan River is the treaty of limits of 1858, the validity of which is being questioned, as confirmed by the fact that that Government has agreed to submit it to the arbitration of the President of the United States of America.

However, assuming, in the meantime, that the aforementioned treaty is in force, let us take a look at its main stipulations, which establish the rights of both Republics.

"Art. 6.-The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan River from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from *Castillo Viejo*, said navigation being for the *objetos de comercio* either with Nicaragua or with the interior of Costa Rica."

"Art. 8.- If the contracts of canalization or transit entered into by the Government of Nicaragua previous to its being informed of the conclusion of this treaty should happen to be invalidated for any reason whatever, Nicaragua binds herself not to enter into any other arrangement for the aforesaid *objetos* without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of 30 days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory."

However, the dispositions cited undoubtedly establish the sovereignty of Nicaragua over the waters of the San Juan River from its origin in the Lake to its mouth in the Atlantic, only granting Costa Rica perpetual rights of free navigation for the *objetos de comercio* from the said mouth up to three English miles before reaching *Castillo Viejo*.

With respect to the right to sign contracts of canalization or inter-oceanic transit, article 8 attributes this exclusively to Nicaragua, as the owner and sovereign of the territory, which it may dispose of without anyone's prior consent, the only limitation being to hear Costa Rica's opinion on the disadvantages this transaction may occasion for both countries, within a fixed term.

In order to comprehend the clauses cited, it is necessary to revert back to the time when the pact was signed, and take into consideration the circumstances of both countries with a view to properly determining the spirit of those stipulations.

The war of the filibusters, the main operations of which were carried out along the San Juan River del Norte, had just ended. The inter-oceanic transit company had favoured these operations and there was fear of another invasion, which could endanger the independence and sovereignty of both Republics. Costa Rica should concur, with prior notice from Nicaragua, it is understood to the guard of that line: as compensation for this duty, and in order to facilitate its implementation, article 2 made her riparian in part of the right hand bank of said River; while article 4 established her duties for incurring in that concession.

The spirit of article 8 is evident. It was logical, in the ideas and the care Nicaragua took in entering into contracts of canalization or transit to guard against dangers similar to those it had just experienced, that Costa Rica, a natural ally of this Republic against all foreign enemies, should take part in the vote. This is the origin of the advisory vote.

I have said that Mr. Peralta's statement that Costa Rica is sovereign to almost three quarters of the canal line does not stand up to scrutiny since it has no basis whatsoever. It is already evident, from the above, that assuming the treaty of limits is valid, Costa Rica would merely be riparian of the San Juan River, from its mouth in the Atlantic to three English miles before reaching *Castillo Viejo*. Let us assume, for a moment, that the canal opens and its entrance is the bay of San Juan, and it ends three miles before reaching *Castillo Viejo*. What part of the Canal would correspond to Costa Rica, it being the owner of the right bank, and taking into account that the entire riverbed and waters of the river, as well as the left bank belong to Nicaragua? Assuming Nicaragua would show the utmost respect and that it would allow Costa Rica to have joint participation in this canal, it is clear that only half of it would correspond to her. And if the canal is extended along the rest of the river, the lake and the land between the latter and the bay of *San Juan del Sur*, or that of *Brito*, which unquestionably belong to Nicaragua, how could Mr. Peralta's claim regarding Costa Rica's sovereignty over the canal line be sustained?

I conclude by confirming the remarks made in my letter of the 2nd, and informing Your Excellency that my Government considers your statement that Nicaragua has, on numerous occasions, recognized Costa Rica's right to participate, as a necessary party, in the canal negotiations, to be unfounded, this statement being contrary to its rights, and even to the stipulations of the treaty the validity of which is being questioned.

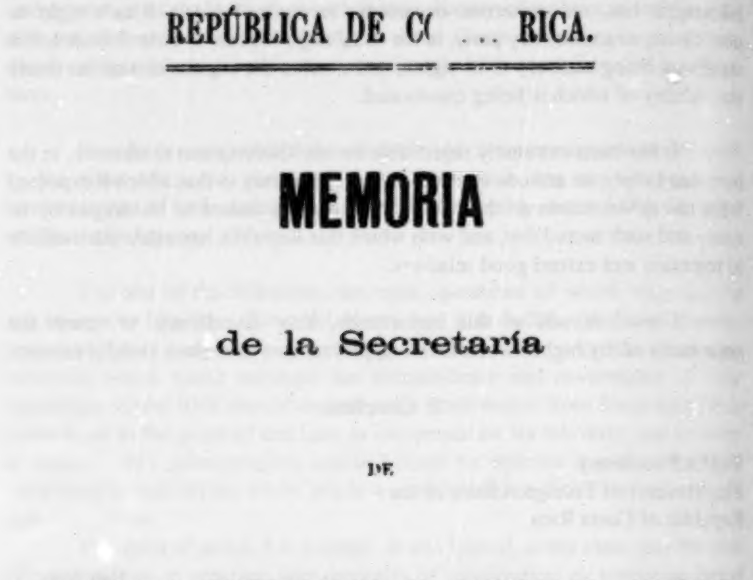
It has been extremely regrettable for my Government to observe, in the note that I reply, an attitude that is completely contrary to that which it expected from the deliberations of the cabinet of a country linked to Nicaragua by so many and such sacred ties, and with which this Republic has made such efforts to maintain and extend good relations.

I avail myself of this opportunity, Your Excellency, to renew the assurances of my highest consideration, and remain your most faithful servant,

F. Castellon.

To His Excellency
The Minister of Foreign Affairs of the
Republic of Costa Rica

San Jose.



REPÚBLICA DE C[illegible] RICA.

MEMORIA

de la Secretaría

DE

RELACIONES EXTERIORES Y CARTERAS ANEXAS.

1887.

San José, Costa Rica.
JMPRENTA NACIONAL.

Ministerio de Relaciones
Exteriores de Nicaragua.

Managua, 18 de octubre de 1886.

SEÑOR:

He tenido el honor de recibir la nota de V. E., de 19 de agosto último, contestación á la mía de fecha 2 del mismo mes, referente á la carta que en 12 de junio del corriente año dirigió al Juez Daly el señor Peralta, Ministro de Costa Rica en Wáshington.

En aquella nota dije que la carta del señor Peralta contiene afirmaciones notoriamente contrarias á la verdad y á los derechos de Nicaragua, y que avanza pretensiones que jamás ha sustentado el Gobierno de Costa Rica, las cuales crearían obstáculos al proyectado Canal Interoceánico; y pedí á V. E. se sirviese declarar, si esa carta es auténtica y si se conforma á las ideas é instrucciones de su Gobierno.

V. E. se sirve informarme que la carta es auténtica, y, en comprobación, me envía copia de su texto original en inglés, asegurando que, aunque no fué escrita por orden ni en virtud de instrucciones especiales de su Gobierno, ha merecido su aprobación, porque, después de maduro examen, halla que, en sustancia, no asevera nada de que pudiera afirmarse que es notoriamente falso; que tampoco reclama derechos, que antes de ahora no haya defendido el Gobierno de Costa Rica; y que, por tanto, el señor Peralta no *ha hecho más* que llenar su deber, y ajustarse á sus instrucciones generales.

V. E. va un poco más allá que el señor Peralta, y afirma que, en repetidas ocasiones, ha reconocido mi Gobierno, el derecho de Costa Rica á participar en el canal proyectado, como parte necesaria en la negociación; se empeña, enseguida, en dar una explicación racional á la afirmación del señor Peralta, de que Costa Rica es soberana casi de tres cuartas partes de la línea del canal, afirmación que supone ser la que ha chocado á mi Gobierno, y que V. E. califica de realmente vaga.

No esperaba ciertamente mi Gobierno que el de V. E. contestase á mi citada comunicación del 2, en los términos en que lo ha hecho, dando su cumplida aprobación á las avanzadas afirmaciones del señor Peralta, tan nuevas en los anales de la cuestión, que se agita entre Nicaragua y Costa Rica, como contrarias á todos los antecedentes de la misma.

No es sólo la afirmación de que Costa Rica es soberana en casi tres cuartas partes de la línea del canal, lo que ha chocado á mi Gobierno. Esta es quizá la que menos ha llamado su atención, porque destituida en absoluto de todo fundamento, cae por su propio peso: es todo el conjunto de la carta; es la pretensión, que no justifica el tratado de 1858, aun suponiendo, sin admitirlo, que estuviese en todo su vigor, de que Costa Rica es parte necesaria en cualquiera concesión, contrato, derechos, obligaciones y conjunto control del canal,con tanto derecho como Nicaragua, lo que le ha causado verdadera sorpresa.

¿De dónde deduce el señor Peralta semejante pretensión para Costa Rica? ¿En qué ha podido el Gobierno de V. E. fundarse, para dar á ese aserto su más cumplida aprobación?

La fuente de los pretendidos derechos de Costa Rica, en los territorios adyacentes á la bahía y río de San Juan, es el tratado de límites de 1858, cuya validez está en cuestión, como lo comprueba el hecho de haber convenido ese Gobierno en someterla al arbitraje del señor Presidente de los Estados Unidos de América.

Pero, suponiendo válido, por un momento, el referido tratado, veamos sus principales estipulaciones, que son las que fijan los derechos de ambas Repúblicas:

"Art. 6º—La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del río San Juan, desde su salida en el lago hasta su desembocadura en el Atlántico; pero la República de Costa Rica tendrá, en dichas aguas, los derechos perpetuos de libre navegación, desde la expresada desembocadura hasta tres millas inglesas antes de llegar al "Castillo Viejo", con "objetos de comercio" ya sea con Nicaragua ó al interior de Costa Rica".

"Art. 8º—Si los contratos de canalización ó de tránsito, celebrados antes de tener el Gobierno de Nicaragua conocimiento de este convenio, llegaren á quedar insubsistentes, por cualquiera causa, Nicaragua se compromete á no concluir otros, sobre los expresados objetos, sin oir antes la opinión del Gobierno de Costa Rica, acerca de los inconvenientes que el negocio pueda tener para los dos países, con tal que esta opinión se emita dentro de 30 días después de recibida la consulta, caso que el de Nicaragua manifieste ser urgente la resolución; y no dañándose en el negocio los derechos naturales de Costa Rica, este voto "sólo será consultivo".

Ahora bien: las disposiciones citadas establecen, de una manera incuestionable, la soberanía de Nicaragua sobre las aguas del río San Juan, desde su salida del Lago hasta su desembocadura en el Atlántico, no dando á Costa Rica más que los derechos perpetuos de libre navegación, sólo con objetos de comercio, desde la referida desembocadura hasta tres millas inglesas antes de llegar al Castillo Viejo.

Respecto del derecho de celebrar contratos del canal, ó tránsito interoceánico, el artículo 8º lo atribuye exclusivamente á Nicaragua, como el dueño y esñor del territorio, del que puede disponer sin previo consentimiento de nadie, con la única limitación de oir, en un término fijo, el voto consultivo de Costa Rica, sobre los inconvenientes que el negocio pueda tener para ambos países.

Para la mejor inteligencia de las cláusulas citadas, es necesario retroceder á la época de la celebración del pacto, y tomar en cuenta las circunstancias de ambos países, á fin de determinar con acierto, el espíritu de aquellas estipulaciones.

Acababa de pasar la guerra de los filibusteros, cuyas principales operaciones se habían ejecutado por el río San Juan del Norte. La Compañía del tránsito interoceánico había favorecido esas operaciones, y se temía una nueva invasión, que podía poner en peligro la independencia y soberanía de ambas Repúblicas. Costa Rica debía concurrir, previo requerimiento de Nicaragua, se entiende, á la guarda de aquella línea: en compensación de ese deber, y para facilitar su cumplimiento, el artículo 2º la constituyó ribereña, en parte de la margen de dicho río; y el artículo 4º le fijó los deberes que contraía por esa concesión.

El espíritu del artículo 8º es manifiesto. Era razonable que, á la meditación y al cuidado que Nicaragua emplease, al celebrar contratos sobre canal ó tránsito por salvar peligros análogos á los que acababan de correrse, concurriese el voto de Costa Rica, aliada natural de esta República contra todo enemigo extranjero. He aquí el origen del voto consultivo.

He dicho que la afirmación del señor Peralta, de ser Costa Rica soberana casi en las tres cuartas partes de la línea del canal, destituida en absoluto de todo fundamento, cae por su propio peso. Ya se ha visto, por lo expuesto, que suponiendo válido el tratado de límites, Costa Rica apenas sería ribereña en el río de San Juan, desde su desembocadura en el Atlántico hasta tres millas inglesas antes de llegar al Castillo Viejo. Supongamos, por un momento, que el canal se abriera, teniendo por entrada la bahía de San Juan, y que terminada tres millas antes de llegar al Castillo Viejo. ¿Qué parte correspondería á Costa Rica en ese Canal, siendo dueña de la margen derecha, y perteneciendo á Nicaragua todo el lecho y las aguas del río, y además la margen izquierda? Suponiendo la mayor deferencia de parte de Nicaragua y que admitiera á Costa Rica igual participación en ese canal, es claro que apenas le correspondería la mitad de la obra. Y si se prolonga el canal sobre el resto del río, el lago y la parte de tierra entre éste y la bahía de San Juan del Sur, ó de Brito, que indisputablemente pertenecen á Nicaragua, ¿cómo podría sostenerse la afirmación del señor Peralta, respecto de la soberanía de Costa Rica en la línea del canal?

Concluyo confirmando los conceptos de mi comunicación del 2, y manifestando á V. E. que mi Gobierno no encuentra el menor fundamento á su aseveración, de que Nicaragua ha reconocida repetidas veces el derecho de Costa Rica á participar en las negociaciones de canal, como parte necesaria, siendo ese reconocimiento contrario á sus derechos, y aun á las estipulaciones del tratado cuya validez se disputa.

Ha sido muy penoso á mi Gobierno observar, en la nota que contesto, un espíritu enteramente contrario al que se prometía encontrar en las deliberaciones del Gabinete de un pueblo ligado á Nicaragua por tantos y tan sagrados vínculos, y con el cual el de esta República se ha esforzado en mantener y ensanchar las buenas relaciones.

Sírvase V. E. aceptar las distinguidas consideraciones, con que me suscribo de V. E. muy

atento y seguro servidor.

F. Castellón.

A Su Excelencia el señor Ministro de Relaciones
Exteriores de la República de Costa Rica.

San José.

Annex 36

LETTER FROM FERNANDO GUZMAN TO COSTA RICAN FOREIGN MINISTER, REPRODUCED IN PEDRO PERÉZ ZELEDÓN, 22 JUNE 1887, *ARGUMENT ON THE QUESTION OF THE VALIDITY OF THE TREATY OF LIMITS BETWEEN COSTA RICA AND NICARAGUA* (WASHINGTON : GIBSON BROS., 1887), PP. 9-11

ARGUMENT

ON THE QUESTION OF THE VALIDITY OF THE TREATY OF LIMITS BETWEEN COSTA RICA AND NICARAGUA

AND

OTHER SUPPLEMENTARY POINTS CONNECTED WITH IT,

SUBMITTED TO THE

Arbitration of the President of the United States of America,

FILED ON BEHALF OF THE GOVERNMENT OF COSTA RICA

BY

PEDRO PÉREZ ZELEDÓN,

ITS ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY
IN THE UNITED STATES.

(TRANSLATED INTO ENGLISH BY J. I. RODRIGUEZ.)

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1887.

POINTS WHICH, ACCORDING TO THE GOVERNMENT OF NICARAGUA, ARE DOUBTFUL AND REQUIRE INTERPRETATION.

DEPARTMENT OF
FOREIGN RELATIONS OF NICARAGUA,
MANAGUA, *June* 22, 1887.

SIR: By order of the President and in pursuance of Article VI of the Convention of Arbitration concluded at Guatemala, between Costa Rica and Nicaragua, I have the honor to communicate to the Government of Your Excellency the points of doubtful interpretation found in the treaty of April 15, 1858, which, in the event foreseen by that Article, this Government proposes to submit to the decision of the arbitrator.

FIRST.

1. Punta de Castilla point having been designated as the beginning of the border line on the Atlantic side, and finding itself, according to the same treaty, at the mouth of the San Juan river; now that the mouth of the river has been changed, from where shall the boundary start?

2. How shall the central point of the Salinas Bay, which is the other end of the dividing line, be fixed?

3. Whether by that central point we are to understand the centre of the figure; and, as it is necessary for its determination to fix the limit of the Bay towards the ocean, what shall that limit be?

SECOND.

4. Nicaragua consented, by Article IV, that the Bay of San Juan, which always exclusively belonged to her and over which she exercised exclusive jurisdiction, should be

common to both Republics; and by Article VI she consented, also, that Costa Rica should have, in the waters of the river, from its mouth on the Atlantic up to three English miles before reaching Castillo Viejo, the perpetual right of free navigation for purposes of commerce. Is Costa Rica bound to concur with Nicaragua in the expense necessary to prevent the Bay from being obstructed, to keep the navigation of the river and port free and unembarrassed, and to improve it for the common benefit? If so,

5. In what proportion must Costa Rica contribute? In case she has to contribute nothing—

6. Can Costa Rica prevent Nicaragua from executing, at her own expense, the works of improvement? Or, shall she have any right to demand indemnification for the places belonging to her on the right bank, which may be necessary to occupy, or for the lands on the same bank which may be flooded or damaged in any other way in consequence of the said works?

THIRD.

7. If, in view of Article V of the treaty, the branch of the San Juan river known as the Colorado river must be considered as the limit between Nicaragua and Costa Rica, from its origin to its mouth on the Atlantic?

FOURTH.

8. If Costa Rica, who, according to Article VI of the treaty, has only the right of free navigation for the purposes of commerce in the waters of the San Juan river, can also navigate with men-of-war or revenue cutters in the same waters?

FIFTH.

9. The eminent domain over the San Juan river from its origin in the Lake and down to its mouth on the Atlantic,

belonging to Nicaragua according to the text of the treaty, can Costa Rica reasonably deny her the right of deviating those waters?

SIXTH.

10. If, considering that the reasons of the stipulation contained in Article VIII of the treaty have disappeared, does Nicaragua, nevertheless, remain bound not to make any grants for canal purposes across her territory without first asking the opinion of Costa Rica, as therein provided? Which are, in this respect, the natural rights of Costa Rica alluded to by this stipulation, and in what cases must they be deemed injured?

SEVENTH.

11. Whether the treaty of April 15, 1858, gives Costa Rica any right to be a party to the grants of inter-oceanic canal which Nicaragua may make, or to share the profits that Nicaragua should reserve for herself as sovereign of the territory and waters, and in compensation of the valuable favors and privileges she may have conceded?

In transmitting the above to Your Excellency, and requesting Your Excellency to acknowledge the receipt thereof, it is pleasing to me to reiterate the assurances of my respect and consideration.

FERNANDO GUZMAN.

To His Excellency THE MINISTER OF FOREIGN RELATIONS of the Government of Costa Rica.

Annex 37

SECRETARY TO THE DIET OF THE MAYOR REPUBLIC OF CENTRAL AMERICA TO THE MINISTER OF FOREIGN AFFAIRS OF COSTA RICA, 27 JULY 1897, REPRODUCED IN *REPÚBLICA DE COSTA RICA : MEMORIA DE RELACIONES EXTERIORES, GRACIA, JUSTICIA, CULTO Y BENEFICIENCIA* (SAN JOSÉ : TIPOGRAFÍA NACIONAL, 1897), PP. 12-15

TRANSLATION

Secretary of the Diet
of the
Mayor Republic of Central America

San Salvador, 27 July 1897

Sir:

In the edition 136 of *La Gaceta* – the official daily of the Government of that Republic – of 15 June, a decree issued by the Constitutional Congress of the same was published, allowing the import of the goods specified in the said decree via the San Juan and Colorado rivers.

When the State of Nicaragua became aware of it, it caused the overall impression that the abovementioned decree threatens the sovereignty of the Nation that has the exclusive dominion and sovereign jurisdiction over the waters of the San Juan River, and Costa Rica only has the right to free navigation for purposes of commerce from the mouth in the Atlantic up to three English miles before reaching *Castillo Viejo*; however, it is in no way authorized to transfer it to other nations, as inferred in the broad sense of the said decree, since it does not limit it to its national ships. Thus, the Government of the State of Nicaragua, in fulfilment of its duty to ensure their sovereign rights are upheld unharmed, has instructed the Diet, in which I am honoured to partake, to present the following protest to Your Excellency's Government:

"The Congress of the Republic of Costa Rica issued a decree, dated the 12th of the past month, by which it authorizes the import of goods – some of which are taxed and others which are free – to the valleys of San Carlos and Sarapiqui, via the Colorado River and the San Juan River of Nicaragua.

"The following is the text of article 1 of this law: "The following goods may be imported via the *San Juan* and Colorado rivers: wood for construction, corrugated iron and sheet iron, wire fencing, etc."

Anyone reading this article and who does not know that only the Colorado River is Costa Rican and not so the *San Juan*, which belongs to the State of Nicaragua, will, naturally, believe Costa Rica to have the dominion and rule over the latter; and the further away the reader is from Central America, the greater this belief will be.

"However, it is not only this, since it would, should the case arise, be relatively simple to clarify the real geographical notion. There is something more serious in the text referred to, since, as will be shown below, it damages the sovereign rights of the State of Nicaragua.

"In effect, the decree we are analyzing states that: *The following goods may be imported via the San Juan and Colorado Rivers*", in other words, *the merchant vessels of all nationalities are permitted to navigate along the San Juan River, in order to transport their cargo to Costa Rican soil*; and all those who are familiar with the law of nations are well aware that it is an act of dominions reserved to the sovereign *to allow* the transit of commercial goods through any given place, be it inland, maritime or a waterway of the territory, and to establish or suppress transit or internment taxes. This right has been exercised by the Government of Costa Rica in the three articles of the abovementioned law, extending it to the waters of the San Juan River that do not belong to that Republic but to Nicaragua, and the decree in question thereby threatens the sovereignty of the Nicaraguan nation.

Nor could Costa Rica allege in its defence that the Treaty of 15 April 1858 granted it the right to navigate freely for the purposes of commerce in the waters of the San Juan River, without any limitation except that of navigating between its mouth in the Atlantic to three English miles before reaching *Castillo Viejo*, because that generosity on the part of Nicaragua does not, in any way whatsoever, affect its sovereignty, as can be clearly seen in the same sixth clause of the agreement that concedes it, which states, in these very words: "*The Republic of Nicaragua shall have exclusively the dominion and supreme control over the waters of the San Juan River*".

This concession, made by Nicaragua to Costa Rica in 1858, is legally of a personal nature and cannot, therefore, be transferred without consent of the sovereign, who is the power authorized to extend it, as it did to that nation in the abovementioned year; or, in other words, the power that Costa Rica has to navigate part of the San Juan River in its commercial vessels is exclusively hers and she cannot extend it to vessels of any other origin, with prior agreement with Nicaragua, who is the only one who can grant it as owner and sovereign of the said river.

"If the Government of Costa Rica had limited itself, in the proper manner, to setting up a customs post at a given place in its territory, Nicaragua would not have had to make this observation; however, from the moment it exceeded its authority, authorizing the passage of goods via the San Juan without the express limitation that they be transferred to their merchant vessels or to those authorized by Nicaragua, who is the owner of the territory, this disposition affects the inalienable rights of this State and inflicts the subsequent grievance.

"It can be concluded from the above that the Costa Rican Congress's decree to which we refer violates, in the terms in which it is established, the Treaty of 1858 and strikes at the heart of the State of Nicaragua's sovereignty.

"It is, therefore, the duty of the Government of Nicaragua, set up to safeguard national interests and rights, among which the integrity of its territory and its subsequent dominion occupy a position of major importance, to solemnly protest, as it hereby does so before the Government of the Republic of Costa Rica, the advance of dominion that the decree of 12 June 1897 entails, and it, consequently, reserves the full exercising of its jurisdiction over the waters of the San Juan, with the obligations implicit in the rejection, by all the means available to it, of the usurpation of the dominion that could take place at present or in the future with regard to the abovementioned law.

"This protest does not mean that the State of Nicaragua is unwilling to respect the existing conventions and the President of the United States of America's Arbitration Award regarding the Treaty of 1858, but, rather, its unflinching determination to strictly adhere to these and none other – as has always been and is currently the case – in which the respective Commission of limits is established, in order to mark them with the mediation of an arbitrator, in accordance with the Pact of San Salvador, and wishing to put an end, once and for all, to this eternal territorial dispute that has been and is a source of discord between neighbouring and fraternal countries; and that it is entirely improper for nations that sooner or later are called upon to unite as one."

The Diet trusts that Your Excellency's Government, convinced of the justice on the part of Nicaragua and as renewed proof of its sound justification, will not be inconvenienced to correct the terms of the decree mentioned many times above, limiting the right of free navigation granted only to Costa Rican vessels.

With sentiments of the highest consideration, I am honoured to remain Your Excellency's most faithful servant,

E. Mendoza

To His Excellency the Minister of Foreign Affairs
of the Government of Costa Rica

San Jose.

REPUBLICA DE COSTA RICA

MEMORIA

—DE—

Relaciones Exteriores, Gracia, Justicia, Culto y Beneficencia

PRESENTADA AL

CONGRESO CONSTITUCIONAL

—DE—

—1897—

por el señor Secretario de Estado

EN ESAS CARTERAS

Licdo. don Ricardo Pacheco

San José
Tipografía Nacional
MDCCCXCVII

es el de 11 de junio pasado, que permite la importación por el San Juan y el Colorado de ciertas mercaderías, la exportación de los productos de San Carlos, Sarapiquí, Parismina, Tortuguero y Colorado y que exime del pago de derechos arancelarios la entrada de determinados artículos.

No se necesita de esfuerzo alguno para comprender que la licencia de introducir mercaderías á los valles de que habla el decreto, ha de estar subordinada á las condiciones en que puede navegarse el río San Juan, y desde luego que este es un río interior, no abierto por su soberano al tráfico extranjero, habrá de comprenderse que tal permiso se refería solamente á naves como las costarricenses, que, por el Tratado de 58 y Laudo arbitral del señor Presidente Cléveland, tienen derecho á hacerlo, las cuales, sin embargo, mal podrían por falta de autorización nacional ocuparse en la carga y descarga de productos por puertos no habilitados para el comercio marítimo.

Sólo anticipando, como se hizo, la especie relativa á nuestras tendencias de adueñarnos del río y del puerto de San Juan, podían con apariencia de verosimilitud atribuirse al decreto fines que no tiene; mas demostrado lo absurdo y falso de aquel dicho, desaparece todo motivo para la infundada interpretación á que vengo refiriéndome.

Tengo la honra de presentar á la Excelentísima Dieta el testimonio de mi respecto y alta consideración y de suscribirme de V. E. obediente y seguro servidor,

RICARDO PACHECO

Al Excelentísimo señor Secretario de la Dieta
de la República Mayor de Centro América

San Salvador

SECRETARÍA DE LA DIETA
DE LA
REPÚBLICA MAYOR DE CENTRO AMÉRICA

San Salvador, 27 de julio de 1897

SEÑOR:

En el número 136, correspondiente al 15 de junio próximo pasado, de *La Gaceta*, diario oficial del Gobierno de esa República, aparece publicado un decreto, emitido por el Congreso Constitucional de la misma, permitiendo la importación, por los ríos San Juan y Colorado, de las mercaderías que el mismo decreto especifica.

Al tenerse conocimiento de él en el Estado de Nicaragua, causó generalmente la impresión de que el indicado decreto es atentatorio á la soberanía de la Nación, que exclusivamente tiene el dominio y sumo imperio de las aguas del río San Juan, y Costa Rica únicamente el derecho de libre navegación para fines de comercio desde su desembocadura en el Atlántico hasta tres millas inglesas antes de llegar al *Castillo viejo;* pero de ninguna manera está autorizada para traspasarlo á otras naciones, como se desprende de la latitud con que está concebido el indicado decreto, pues no lo limita á sus buques nacionales. Con tal motivo, el Gobierno del Estado de Nicaragua, en cumplimiento del deber que tiene de velar por que se mantengan incólumes los derechos soberanos de la Nación, ha dado instrucciones á la Dieta, de la que tengo el honor de ser órgano, para presentar al Gobierno de V. E. la siguiente protesta:

" El Congreso de la República de Costa Rica dictó, con fecha 12 del mes pasado, un decreto por el cual autoriza la importación de mercaderías, con gravamen unas, libres otras, á los valles de San Carlos y Sarapiquí, por la vía de los ríos Colorado y San Juan de Nicaragua.

" He aquí el texto del artículo 1º de esa ley : " *Permítese* la importación, por los ríos *San Juan* y Colorado, de las siguientes mercaderías: maderas de construcción, hierro acanalado y en planchas, alambres para cercas, etc."

Cualquiera que lea este artículo é ignore que solamente el río Colorado es costarricense y no el *San Juan,* que pertenece al Estado de Nicaragua, conceptuará desde luego éste como un dominio y señorío de Costa Rica; y esta apariencia será tanto mayor cuanto más distante de Centro América y de sus peculiaridades se coloque el que leyere.

" Pero no es esto sólo, pues al fin y al cabo fácil sería, llegado el caso, rectificar la verdadera noción geográfica. Hay algo más grave en el texto en referencia, porque, como se demostrará en seguida, hiere los derechos de soberanía del Estado de Nicaragua.

" En efecto, el decreto que analizamos dice : *Permítese la importación por los ríos San Juan y Colorado de las siguientes mercaderías*" es decir, *los buques mercantes de todas las nacionalidades tienen el permiso para navegar por el río San Juan, á fin de conducir su carga al suelo costarricense;* y bien sabido es por todos los que conocen la ley de las naciones, que es acto de dominio reservado al soberano, *permitir* el tránsito de efectos comerciales por un lugar cualquiera, terrestre, marítimo ó fluvial del territorio y establecer ó suprimir impuestos de tránsito ó internación. Este derecho lo ha ejercitado el Gobierno de Costa Rica en los tres artículos de la ley á que nos referimos, extendiéndolo á las aguas del río San Juan que no son de aquella República sino de Nicaragua, y por lo mismo el decreto en cuestión es atentatorio á la soberanía de la nación nicaragüense.

Ni podría Costa Rica alegar en su descargo que el Tratado de 15 de abril de 1858 le otorgó la concesión de navegar libremente para fines de comercio en las aguas del río San Juan, sin más limitación que la de recorrerlas desde su desembocadura en el Atlántico hasta tres millas inglesas antes de llegar al *Castillo viejo*, porque esa liberalidad de Nicaragua no afecta en lo mínimo su soberanía, como se ve claramente en la misma cláusula 6ª del convenio que la concede, la cual expresa estas precisas palabras: "*La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio de las aguas del río San Juan.*"

Esta concesión hecha por Nicaragua á Costa Rica en 1858, es jurídicamente de carácter personal, y no puede, por lo mismo, traspasarla sin anuencia del soberano, que es el poder facultado para extenderla, como ya lo hizo con aquella nación en el año aludido; ó en otros términos, la facultad que Costa Rica tiene para navegar en parte del río San Juan con sus naves de comercio, es privativamente de ella y no puede extenderla á buques de otra procedencia, sin previo acuerdo con Nicaragua, que es la única que puede otorgarla en su calidad de dueño y señor del mencionado río.

"Si el Gobierno de Costa Rica se hubiera limitado, como era debido, á establecer una aduana en un punto de su suelo, nada tendría que observar Nicaragua; pero como desde el momento que se extralimita, autorizando el tránsito de mercaderías por el San Juan, sin la expresa limitación de que pasen á bordo de sus navíos mercantes ó de los buques autorizados por Nicaragua, que es el dueño del territorio, semejante disposición afecta los derechos inalienables de este Estado é infiere el agravio consiguiente.

"De lo dicho se deduce que el decreto del Congreso de Costa Rica, á que nos referimos, en los términos en que está concebido, es violatorio del Tratado de 1858 y ataca en su esencia la soberanía del Estado de Nicaragua.

"Cumple, pues, al deber del Gobierno nicaragüense, constituído para velar por los intereses y derechos nacionales, entre los que ocupa un lugar primordial la integridad del territorio y su consiguiente dominio, protestar solemnemente, como en efecto protesta ante el Gobierno de la República de Costa Rica, por el avance de señorío que entraña el decreto de 12 de junio de 1897, y se reserva, en consecuencia, el ejercicio pleno de su imperio sobre las aguas del San Juan, con las obligaciones que le son anexas de rechazar por cuantos medios estén á su alcance las usurpaciones de dominio que pudieran fundarse al presente ó en el porvenir sobre la letra de la ley citada.

"Esta protesta no significa que el Estado de Nicaragua no esté dispuesto á respetar los convenios existentes y el Laudo arbitral del señor Presidente de los Estados Unidos de América, relativo al Tratado de 1858, sino su resolución inquebrantable de sujetarse estrictamente á ellos y nada más, como se ha sujetado siempre y se amolda en la actualidad, en que tiene establecida la respectiva Comisión de límites, para trazarlos con la mediación de un árbitro, de conformidad con el Pacto de San Salvador, y deseoso de concluir de una vez para siempre con esta eterna disputa territorial, que ha sido y es semillero de discordias entre países vecinos y hermanos; y que es por todo extremo impropia de pueblos que están llamados á confundirse más ó menos tarde en una sola nación."

La Dieta abriga la esperanza de que convencido el Gobierno de V. E. de la justicia que asiste al de Nicaragua, y dando una nueva prueba de su alta justificación, no tendrá inconveniente en rectificar los términos del decreto tantas veces citado, limitando el derecho de libre navegación que concede solamente á las embarcaciones costarricenses.

Con sentimientos de la más distinguida consideración, tengo la honra de suscribirme de V. E. muy atento servidor,

E. Mendoza

Á Su Excelencia el señor Ministro de Relaciones
Exteriores del Gobierno de Costa Rica
San José

Annex 38

COSTA RICAN MINISTER PLENIPOTENTIARY IN WASHINGTON, J. B. CALVO, TO UNITED STATES SECRETARY OF STATE, WILLIAM JENNINGS BRYAN, 17 APRIL 1913, REPRODUCED IN *BEFORE THE CENTRAL AMERICAN COURT OF JUSTICE : THE REPUBLIC OF COSTA RICA AGAINST THE REPUBLIC OF NICARAGUA* (WASHINGTON : PRESS OF GIBSON BROS., INC., 1916), PP. 70-72

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Costa Rica

BEFORE THE

CENTRAL AMERICAN COURT OF JUSTICE

THE REPUBLIC OF COSTA RICA

AGAINST

THE REPUBLIC OF NICARAGUA

COMPLAINT

OF THE REPUBLIC OF COSTA RICA GROWING OUT OF A CONVENTION ENTERED INTO BY THE REPUBLIC OF NICARAGUA WITH THE REPUBLIC OF THE UNITED STATES OF AMERICA FOR THE SALE OF THE SAN JUAN RIVER AND OTHER MATTERS.

WITH APPENDICES

(PRINTED AT THE NATIONAL PRINTING OFFICE
SAN JOSÉ, COSTA RICA)

TRANSLATION

WASHINGTON
PRESS OF GIBSON BROS., INC.
1916

APPENDIX G.

LEGATION OF COSTA RICA,
WASHINGTON, *April 17, 1913*.

MR. SECRETARY: News has reached my Government, although informally, to the effect that during the last days of February last, a contract, entered into by the Governments of Nicaragua and of Washington for the construction of an interoceanic canal across Nicaragua, was submitted to the United States Senate for ratification.

That news, of necessity, caused profound surprise to my Government, because the negotiation therein involved cannot be carried into effect without flagrant violation of the existence of the clearest possible treaty agreements that inhibit Nicaragua's entry into any convention for interoceanic canalization without first consulting Costa Rica, in one case, and in another, without first securing her acquiescence.

Article 8th of the Treaty of Limits, concluded between Costa Rica and Nicaragua on the 15th of April, 1858, reads as follows:

> "Art. 8. If the contracts for canalization or transit entered into before the Nicaraguan Government had knowledge of this convention should for any cause cease to be in force, Nicaragua agrees not to conclude any others relating to the objects above stated without first hearing the opinion of the Costa Rican Government respecting the disadvantages that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory."

The arbitral award rendered by His Excellency Grover Cleveland, President of the United States of America, on the 22d of March, 1888, declares in its first finding that the said Treaty of Limits, of 1858, is valid, and then, interpreting the tenth of the eleven points of doubtful understanding submitted to him by Nicaragua in the controversy, decided as follows:

> "10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same."

An examination of the above documents will convince Your Excellency that the Republic of Nicaragua was without legal capacity to enter into the convention in question, which is now before the Senate, and that that lack of capacity—solemnly declared, in 1888, as above stated, by the President of the United States—fundamentally vitiates the negotiations.

But my Government is not only supported by incontrovertible reasons *de jure* in her opposition to the treaty; compelling and controlling reasons *de facto* force it into the controversy, for, as Your Excellency surely knows, it is wholly impossible to construct an interoceanic canal across Nicaragua without affecting, to a greater or less extent, the lands and waters of Costa Rica.

For the foregoing reasons, in obedience to instructions from my Government, and in its name, I have the honor formally to lodge, with great respect, through the medium of Your Excellency, a protest with the enlightened and justice-loving Government of the United States, against the perfecting of the convention for canal purposes to which I have above referred; and I rest in the confidence that the lofty sentiment of equity that always guides the Washington Government, will induce it, on this occasion, to resolve the question in perfect conformity with justice and in the traditional friendship with which Costa Rica has always been honored by the great American Nation.

I have the honor to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

J. B. CALVO.

To His Excellency,
WILLIAM JENNINGS BRYAN,
Secretary of State of the
United States of America.

Annex 39

COSTA RICAN MINISTER IN NICARAGUA, F. CABEZAS GÓMEZ, TO NICARAGUAN FOREIGN MINISTER, DIEGO M. CHAMORRO, 27 APRIL 1913, REPRODUCED IN *BEFORE THE CENTRAL AMERICAN COURT OF JUSTICE : THE REPUBLIC OF COSTA RICA AGAINST THE REPUBLIC OF NICARAGUA* (WASHINGTON : PRESS OF GIBSON BROS., INC., 1916), PP. 68-69

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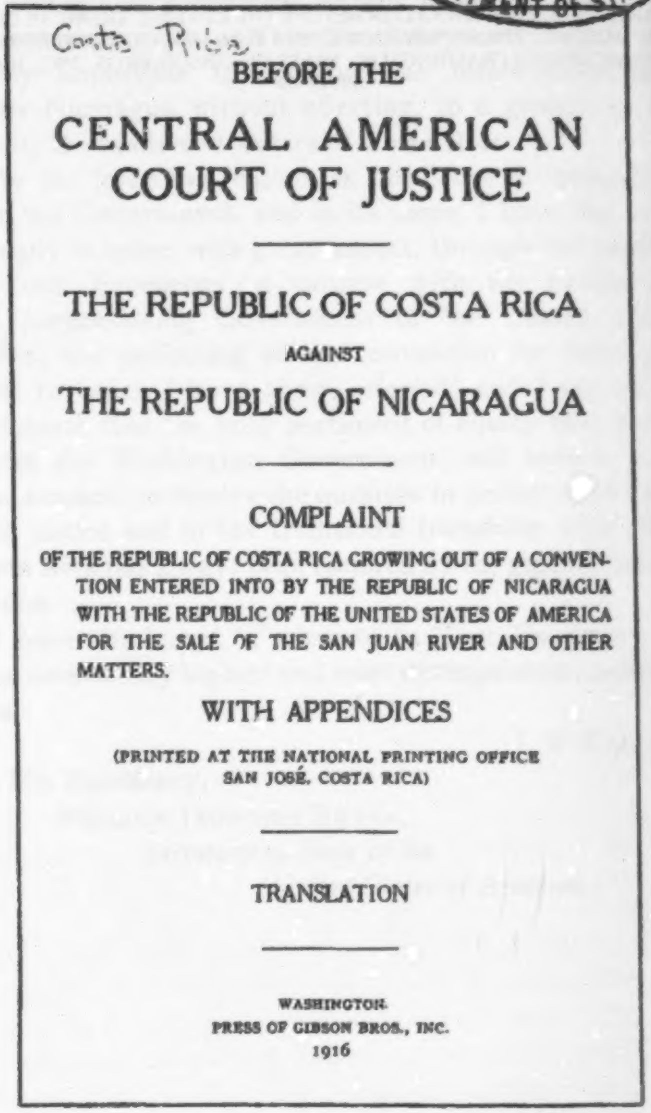

Costa Rica

BEFORE THE

CENTRAL AMERICAN COURT OF JUSTICE

THE REPUBLIC OF COSTA RICA
AGAINST
THE REPUBLIC OF NICARAGUA

COMPLAINT

OF THE REPUBLIC OF COSTA RICA GROWING OUT OF A CONVENTION ENTERED INTO BY THE REPUBLIC OF NICARAGUA WITH THE REPUBLIC OF THE UNITED STATES OF AMERICA FOR THE SALE OF THE SAN JUAN RIVER AND OTHER MATTERS.

WITH APPENDICES

(PRINTED AT THE NATIONAL PRINTING OFFICE
SAN JOSÉ, COSTA RICA)

TRANSLATION

WASHINGTON
PRESS OF GIBSON BROS., INC.
1916

APPENDIX F.

LEGATION OF COSTA RICA,
MANAGUA, *April 27, 1913.*

MR. MINISTER: The news has reached my Government that during the past few days the Legislative Assembly of Nicaragua has given its high approval to a treaty which Your Excellency's Government has entered into with the Government of the United States of America relating to the construction of an interoceanic canal.

In view of the cordiality and consequent friendship of which so many proofs have been given us by the fraternal Government of Nicaragua, this news has caused profound surprise to my Government, because it involves a direct violation of the existing treaties that regulate the relations between our two countries.

Article 8th of the Treaty of April 15, 1858, and the interpretation given by President Cleveland, in the arbitral award of March 22, 1888, to the tenth point of doubtful understanding that was presented by Nicaragua in the arbitration which Costa Rica joined with her in submitting to the decision of that Exalted Judge, positively establish the inhibition resting upon the former to grant any concession relating to an interoceanic canal across her territory without previously hearing the opinion of the latter.

The omission of that indispensable step on the part of the Government of Nicaragua on the present occasion my Government conceives to be sufficient to vitiate and render wholly void the treaty in question, and these views have been transmitted to the American Government, before which, on this same day, formal protest has been made.

The intimate and binding community of interests involved for Costa Rica and Nicaragua by the construction of a canal in a frontier zone, would be more than a sufficient reason why neither of the two nations could, without serious discourtesy to the other, enter into a treaty for such a purpose. And if, as in the present case, in addition to these purely ethical reasons, there exists a solemn and mandatory agreement, Your Excellency will understand that my Government neither can nor should allow such absolute ignoring of its legitimate rights to pass in silence.

For the above reasons, and in fulfillment of instructions from my Government, and in its name, I have the honor to present—through the distinguished medium of Your Excellency—to the enlightened and illustrious Government of Nicaragua, formal protest against the unlawful conclusion and ratification of the treaty to which I have just referred.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

F. CABEZAS GÓMEZ.

To His Excellency,
Señor DON DIEGO M. CHAMORRO,
Minister of Foreign Relations of
The Republic of Nicaragua.

(From the *Report on Foreign Relations* of Costa Rica, 1913, Expositive Part, p. IX.)

Annex 40

NICARAGUAN AMBASSADOR IN COSTA RICA, JAVIER CHAMORRO MORA, TO COSTA RICAN FOREIGN MINISTER, BERND NIEHAUS QUESADA, NOTE NO. E.N. 1323/80, 12 NOVEMBER 1980

TRANSLATION

Embassy of Nicaragua
San José, Costa Rica

E.N. 1323/80

November 12, 1980

Excellency:

I have the honour to address Your Excellency to acknowledge receipt of your Note N° 1357-80, dated November 5, by which you filed a formal protest on behalf of the illustrious Government of Costa Rica, before the Government of Nicaragua, concerning the events that occurred in the region of the San Juan River near the confluence with the Sarapiqui River, which involved some members of our border troops stationed in that area.

Your Excellency states that this is not the first time this type of incident occurs in that area, something which, in your opinion, does not contribute to preserve the good relations that have existed so far between both peoples and governments, and urges us, therefore, to instruct our authorities in the region to respect in the future the free navigation on the San Juan, as set forth in the agreements in force between both countries.

With instructions from my government, I would like to inform Your Excellency that we deeply regret the above-mentioned incident, and that we have taken the necessary measures to ensure that this type of events will not happen again, since they do not reflect at all the official position of the Nicaraguan government.

On the contrary, I would like to express to you that, as faithful complie of the international treaties, in this case the Cañas-Jerez Treaty, we have the best intentions to respect Costa Rica's free navigation rights on that Nicaraguan waterway, according to the provisions of both that treaty and the Cleveland Award.

In the same manner, Your Excellency, the Government of Nicaragua wants to convey to you, through me, its wishes to develop, in cooperation with whatever the authorities your distinguished governments deems appropriate, a project to prevent regrettable situations as the one aforementioned, which do not correspond to the excellent relations that both our peoples and governments have cultivated.

I take this opportunity to reiterate to Your Excellency, the assurances my highest and most distinguished consideration.

Javier Chamorro Mora
Ambassador of Nicaragua

His Excellency
Mr. Bernd Niehaus Quesada
Minister of Foreign Affairs and Worship

Copia

Embajada de Nicaragua
Protocolo

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EMBAJADA DE NICARAGUA
SAN JOSE COSTA RICA

"AÑO DE LA ALFABETIZACION"

E.N. 1323/80

12 de Noviembre de 1980

Excelencia:

Tengo el honor de dirigirme a Vuestra Excelencia a fin de acusar recibo de su Nota No. 1357-80 del 5 del presente mes, mediante la cual presentó formal protesta a nombre del Ilustrado Gobierno de Costa Rica, ante el Gobierno de Nicaragua, en relación a los hechos ocurridos en la región del Río San Juan, cerca de la confluencia del Río Sarapiquí, donde se vieron involucrados algunos elementos de nuestra tropa guardafronteras, acantonados en esa zona.

Vuestra Excelencia indica que no es la primera vez que se registran incidentes de esa naturaleza en la mencionada zona, lo que a su juicio no ayuda a mantener las buenas relaciones que hasta la fecha han existido entre ambos pueblos y gobiernos, instándonos por consiguiente, a instruir a nuestras autoridades en la región para que en el futuro, se respete la libre navegación en el Río San Juan tal como está estipulado en los convenios vigentes entre ambos países.

Con instrucciones de mi gobierno me permito comunicar a Vuestra Excelencia, que lamentamos profundamente el incidente antes mencionado y que hemos tomado las medidas pertinentes para que hechos de esa naturaleza no se vuelvan a repetir, pues en ningún momento reflejan la posición oficial del gobierno nicaragüense.

.../...

*Excelentísimo Señor
Bernd Niehaus Quesada
Ministro de Relaciones
Exteriores y Culto,
Ciudad*

BAJADA DE NICARAGUA
SAN JOSE, COSTA RICA

"AÑO DE LA ALFABETIZACION"

-2-

E.N. 1323/80

12 de Noviembre de 1980

Por el contrario, me permito expresarle que como fieles cumplidores de los tratados internacionales, en este caso el de Cañas-Jerez, tenemos la mejor buena voluntad y disposición en respetar el derecho de libre navegación de Costa Rica en esa vía fluvial nicaragüense, en los términos establecidos tanto en dicho tratado como en el laudo Cleveland.

De la misma manera, Vuestra Excelencia, el Gobierno de Nicaragua, a través de mi persona, expresa su voluntad de elaborar un proyecto en colaboración con las autoridades que el Ilustrado Gobierno de Costa Rica, considere pertinentes, a fin de prevenir situaciones lamentables como la anteriormente referida y que no van acordes con las magníficas relaciones que nuestros dos pueblos y gobiernos han sabido mantener.

Aprovecho la ocasión para reiterar a Vuestra Excelencia, las seguridades de mi consideración más alta y distinguida.

JAVIER CHAMORRO MORA
Embajador de Nicaragua

JCHM/mtc

Annex 41

COSTA RICAN FOREIGN MINISTER, FERNANDO VOLIO JIMÉNEZ, TO NICARAGUAN CHARGÉ D'AFFAIRES A.I. TO COSTA RICA, OSCAR RAMÓN TÉLLEZ, NOTE NO. D.M. 133-82, 8 JUNE 1982

TRANSLATION

Republic of Costa Rica
Ministry of Foreign Affairs and Worship

N° D.M. 133-82

San José, June 8, 1982

Chargé d' Affaires, a.i.:

Mr. Angel Edmundo Solano Calderón, Minister of Public Security, yesterday forwarded to my office a complaint filed on the same date by the Manager of "SWISS TRAVEL SERVICE, S.A.", a Costa Rican company, stating that:

> "Yesterday, Sunday, June 6, while our boat was heading to Puerto Viejo with 10 tourists, it was intercepted by a Sandinista patrol, which forced all of our tourists to get off the boat, and show all their belongings. After arguing for several hours with the passengers and the boatman, they told our employee that he should notify our head office that as of yesterday, Costa Rican vessels were not allowed to pass through the San Juan River, specially with American and European tourists, like the ones that were in yesterday's tour."

The incident reported by Mrs. Gamboa is very serious because it affects the rights of free navigation on the San Juan River that are categorically and perpetually guaranteed for Costa Rica, and because it harms the economic interests of the country. Therefore, on behalf of the Government of Costa Rica, I am filing a protest before the Government of Nicaragua, for the above-mentioned incident, through Your Excellency. In addition, the Government of Costa Rica requests that the Government of Nicaragua takes the necessary and urgent actions to sanction the members of the patrol that incurred in that offence, and to prevent that such repudiable actions will happen again in the future.

I take this opportunity to reiterate to Your Excellency, the assurances of my highest and most distinguished consideration.

FERNANDO VOLIO JIMENEZ
Minister of Foreign Affairs and Worship

Honourable
Mr. Oscar Ramón Téllez
Chargé d' Affaires, a.i.:
Nicaraguan Embassy

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

N° D.M. 133-82

San José, 8 de junio de 1982

Señor Encargado de Negocios a.i.:

Don Angel Edmundo Solano Calderón, Ministro de Seguridad Pública, me remitió ayer la queja que ante él planteó en la misma fecha, la Gerente de la "SWISS TRAVEL SERVICE S.A.", empresa costarricense, en el sentido de que:

> " Ayer domingo 6 de junio, mientras nuestra lancha se dirigía con 10 turistas hacia Puerto Viejo fueron interceptados por una patrulla sandinista, quienes obligaron a todos nuestros turistas a bajar del bote, mostrar todas sus pertenencias y después de argumentar por varias horas con los pasajeros y con el botero, avisaron a nuestro empleado que notificara a la oficina central que desde ayer quedaba prohibido a embarcaciones ticas atravesar por el río San Juan, especialmente con turistas norteamericanos y europeos como los que viajaban en la excursión de ayer."

El hecho relatado por la señora Gamboa es muy grave, pues afecta el derecho de libre navegación sobre el río San Juan que Costa Rica tiene garantizado categórica y perpetuamente, y porque perjudica los intereses económicos del país. En consecuencia, en nombre del Gobierno de Costa Rica presento al Gobierno de Nicaragua, por el digno medio de

Honorable Señor
Oscar Ramón Téllez
Encargado de Negocios a.i.
Embajada de la República de Nicaragua
CIUDAD .

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

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Vuestra Señoría, su protesta por el hecho arriba citado. Asimismo, el Gobierno de Costa Rica pide que el Gobierno de Nicaragua tome las medidas indispensables y urgentes para sancionar a los miembros de la patrulla que cometió aquel desafuero y evite que en el futuro se repitan actos tan repudiables como ese.

Aprovecho la oportunidad para reiterar a Vuestra Señoría las seguridades de mi más alta y distinguida consideración.

FERNANDO VOLIO JIMENEZ
Ministro de Relaciones Exteriores y Culto

Annex 42

COSTA RICAN FOREIGN MINISTER, FERNANDO VOLIO JIMÉNEZ, TO NICARAGUAN CHARGÉ D'AFFAIRES TO COSTA RICA, OSCAR RAMÓN TÉLLEZ, NOTE NO. D.M. 126-62, 16 JULY 1982

TRANSLATION

Republic of Costa Rica
Ministry of Foreign Affairs and Worship

D.M. 126-62

San Jose, 16 July 1982

Chargé d'Affaires a.i.:

On the 13th of the current month, I received new information on the interference by the Nicaraguan Army to the detriment of Costa Rica's right to free and perpetual navigation on the San Juan River, a right that is not subject to any condition whatsoever, apart from that of not using it for navigating with vessels of war.

The Nicaraguan authorities have set out the following new and illegal conditions for the navigation of Costa Rican tourist vessels:

1st - Each boatman must carry proof of having paid the departure clearance certificate at the Rural Assistance Guard Post in Barra del Colorado, to the Nicaraguan border post and change it for a new one that is issued there at a cost of ¢10.00 each, because, according to the Nicaraguan authorities, the one issued by the Costa Rican authorities is not valid for navigating the San Juan River.

2nd – In order to exchange the departure clearance certificates, the boatman must go up to the post, which is on top of a hill, and to reach it and return to the boat, under the rain and through the mud and other inconveniences, it takes approximately 40 minutes.

3rd- The boatman must then show the Nicaraguan departure clearance certificate to the guard at the river bank, who then proceeds to ask the passengers for their passports and search their luggage and personal belongings. This takes another 30 to 40 minutes.

MR. OSCAR RAMON TELLEZ
CHARGE D'AFFAIRES A.I.
EMBASSY OF NICARAGUA
CITY.-

The Nicaraguan guards who carry out all these interferences are armed and no argument given by the Costa Rican boatmen is valid for asserting the right to free navigation.

I am aware that my formal written protest and other complaints I have lodged to the Government of Nicaragua, in addition to other verbal complaints made before Ex-Ambassador Leal, before you, Sir, and before His Excellency the Acting Interior Minister, Mr. Victor Hugo Tinoco, have been to no avail.

All these interferences, which are unjustified and illegal, contradict the statements made by the Government of Nicaragua to the effect that it wishes to maintain cordial and correct diplomatic relations with the Government of Costa Rica, who has shown articulate signs of adjusting its conduct to the norms of international law currently in force, including those that specifically regulate the relations between Costa Rica and Nicaragua. On lodging this new complaint, I hope that the Illustrious Government of Nicaragua will soon put an end to the interferences I have mentioned, that have no justification whatsoever, since Costa Rica has always made peaceful and adequate use of its inalienable and perpetual right to navigate the San Juan River. In contrast, Nicaragua has, by means of the repeated interferences I have described, has shown a hostile attitude that the Government of Costa Rica condemns.

I sincerely hope, Sir, that this matter is resolved promptly for the sake of the relations between the two countries.

I would like to take this opportunity, Sir, to once again express the testimony of my highest and most distinguished consideration.

Original signed: Fernando Volio Jimenez

FERNANDO VOLIO JIMENEZ
Minister of Foreign Affairs and Worship

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

D. M. 126-82

San José, 16 de julio de 1982

Señor Encargado de Negocios a.i.:

El día 13 de este mes, recibí nueva información acerca de la interferencia que lleva a cabo el Ejército de Nicaragua en perjuicio del derecho de Costa Rica a la libre y perpetua navegación por el Río San Juan, derecho no sujeto a condición alguna, salvo la de no utilizarlo para la navegación de buques de guerra.

Las autoridades nicaraguenses han establecido las siguientes nuevas e ilegales condiciones para la navegación de embarcaciones costarricenses de turismo:

1o.- Cada botero debe llevar la constancia de haber pagado el derecho de zarpe, en la Guardia de Asistencia Rural de la Barra del Colorado, al puesto fronterizo nicaraguense y cambiarlo por uno nuevo que allí se emite a un costo de ₡ 10.oo cada uno, en vista de que según las autoridades nicaraguenses, el emitido por las autoridades costarricenses queda sin valor al navegar por el Río San Juan

2o.- Para hacer el canje de zarpes el botero debe subir a la caseta, que queda en una peña y para escalarla y regresar al bote bajo la lluvia, el barro y otras incomodidades, tarda aproximadamente 40 minutos.

3o.- Posteriormente, el botero debe mostrar el zarpe de Nicaragua al Guarda que está a la orilla del Río, quien entonces procede a solicitar pasaportes y hacer un registro de equipajes y efectos personales de los turistas. En esa actividad hay otra demora entre 30 o 40 minutos.

HONORABLE SEÑOR
OSCAR RAMON TELLEZ
ENCARGADO DE NEGOCIOS A.I.
EMBAJADA DE NICARAGUA

CIUDAD.-

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

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Los guardias de Nicaragua que realizan todas esas interferencias están armados y para ellos no vale ningún argumento que aducen los boteros costarricenses para afirmar el derecho de libre navegación.

Veo que para el Gobierno de Nicaragua no han valido mi anterior protesta formal, escrita, ni otras reclamaciones que verbalmente he hecho ante el Ex Embajador Leal, ante Vuestra Señoría y ante su Excelencia el Ministro del Exterior por Ley, don Victor Hugo Tinoco.

Todas estas interferencias, injustificadas y antijurídicas, contrarían las expresiones del Gobierno de Nicaragua que desean mantener una cordial y correcta relación diplomática con el Gobierno de Costa Rica, el cual ha dado muestras, elocuentes, de ajustar su conducta a las normas vigentes del derecho internacional, inclusive las que regulan en forma particular las relaciones entre Costa Rica y Nicaragua. Al presentar esta nueva protesta, espero que muy pronto el Ilustrado Gobierno de Nicaragua termine con las interferencias a que me he referido, que no tienen justificación alguna, pues Costa Rica siempre ha hecho un uso pacífico y adecuado de su derecho inalienable e imprescriptible de navegación por el Río San Juan. En cambio, Nicaragua con las reiteradas interferencias que he relatado ha puesto en evidencia una actitud hostil que el Gobierno de Costa Rica repudia.

Es de esperar, Vuestra Señoría, que este asunto se solucione pronto para bien de las relaciones entre ambos países.

Aprovecho la oportunidad para reiterar a Vuestra Señoría las muestras de mi más alta y distinguida consideración,

ORIGINAL FIRMADO Fernando Volio Jiménez

FERNANDO VOLIO JIMENEZ
Ministro de Relaciones Exteriores y Culto

Annex 43

COSTA RICAN FOREIGN MINISTER, FERNANDO VOLIO JIMÉNEZ, TO NICARAGUAN CHARGÉ D'AFFAIRES A.I. TO COSTA RICA, OSCAR RAMÓN TÉLLEZ,

NOTE NO. D.M. 127-82, 20 JULY 1982

TRANSLATION

Republic of Costa Rica
Ministry of Foreign Affairs and Worship

D.M. 127-82

San José, July 20, 1982

Chargé d' Affaires, a.i.:

Your Excellency will remember that on Friday, July 16, in my office, I informed you of the news received from the Manager of Swiss Travel Service, concerning a resolution taken by Nicaraguan authorities. They informed her that "as of today (the 16th), at 6 p.m., the passage for all Costa Rican vessels will be prohibited, and it will be re-opened on July 22nd, because of the celebration of the Sandinista Revolution."

In that meeting, where the Deputy Minister Peters was also present, I added that if the news were true and Nicaraguan authorities went ahead with their decision, this would be a serious violation to the Cañas-Jerez Border Treaty, and it would therefore cause a serious alteration in the diplomatic relations between Costa Rica and Nicaragua.

I also said that I trusted this was not true, and that the tourist trips scheduled by Swiss Travel, for next Sunday and Wednesday could proceed normally, as well as other trips in Costa Rican vessels.

I deeply regret to tell Your Excellency that the news were true, because on Saturday, around 17:55 hours, an outboard motor boat was detained by Nicaraguan authorities, and its three Costa Rican passengers, were not allowed to cross the San Juan River. One of them, Mr. Elí Alvarado Sancho, was held by Nicaraguan authorities, and he was released yesterday morning, thanks to the negotiations made by Your Excellency on my request. Nicaraguan authorities stated that the transit across the San Juan River was closed until the 22nd inclusive.

Honourable
Oscar Ramón Telles
Chargé d' Affaires, a.i.
Nicaraguan Embassy

The Manager of "Swiss Travel Service" also tells me that on Sunday morning, around 10:30, two boats that were sailing from Barra del Colorado to Puerto Viejo, to pick-up a group of tourists, were detained by Nicaraguan authorities and forced to go back to were they came from. This caused a great complication for the tourists and the agency, that had to rent planes to transport the tourists, 12 of them Swiss, to Barra del Colorado. On that occasion also the Nicaraguan authorities stated that navigation in the San Juan River was not allowed until the 22nd, inclusive. Two Costa Rican Rural Guards, that were on leave, and were headed to the central zone of our country, were in those boats: Messrs. Ramón Cunningham Espinoza and Juan Arquida Núñez.

For all this, I must file a protest, as I indeed do, for these new hostile acts that go totally against Costa Rica's unconditional, free and perpetual navigation right on the San Juan River. I hope that the Government of Nicaragua understands that these methods, that affect the existing diplomatic relations between the two countries, must end immediately.

Therefore, I shall wait for a proper explanation of the aforementioned facts, as well as of earlier events, about which I informed the Government of Nicaragua in previous correspondence.

I take this opportunity to reiterate to Your Excellency, my highest and most distinguished consideration,

FERNANDO VOLIO JIMENEZ
Minister of Foreign Affairs and Worship

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

D. M. 127-82

San José, 20 de julio de 1982

Señor Encargado de Negocios a.i.:

Recordará Vuestra Señoría que el viernes 16 de julio en mi Despacho, le comuniqué la noticia que había recibido del Gerente de la Agencia de Turismo "Swiss Travel Service", en el sentido de que autoridades de Nicaragua le habían manifestado que "a partir de hoy (día 16) a las 6 p.m. queda prohibido el paso a toda embarcación costarricense y se abrirá de nuevo hasta el 22 de julio debido a que están en celebración de la revolución sandinista".

Agregué en dicha reunión, a la que asistió también el señor Vice-Ministro Peters, que de ser cierta la noticia y de llevarse a cabo constituiría una muy grave violación del Tratado de Límites Cañas-Jerez y, consecuentemente, provocaría una seria perturbación en las relaciones diplomáticas entre Costa Rica y Nicaragua. Manifesté, asimismo, que confiaba en que la noticia no fuera cierta, lo mismo que los viajes de turistas programados para el domingo y el miércoles próximos, por la antes dicha Agencia de Viajes pudieran realizarse, lo mismo que cualesquiera otros de embarcaciones costarricenses.

Deploro manifestarle a Vuestra Señoría que la noticia resultó cierta, pues el sábado, cerca de las 17:55 horas, una panga con motor fuera de borda fue detenida por autoridades de Nicaragua y sus tres tripulantes, todos costarricenses, se les impidió la navegación por el Río San Juan, y a uno de ellos, don Elí Alvarado Sancho, se le detuvo y fue liberado hasta ayer por la mañana, gracias a las gestiones hechas por Vuestra Señoría a instancias mías. Las autori-

HONORABLE SEÑOR
OSCAR RAMON TELLES
ENCARGADO DE NEGOCIOS A.I.
EMBAJADA DE NICARAGUA

CIUDAD.-

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

.2.

dades nicaraguenses alegaron que estaba interrumpido el tránsito por el Río San Juan hasta el 22 de este mes inclusive.

Asimismo, la Gerente de "Swiss Travel Service" me informa que el domingo por la mañana, cerca de las 10:30, dos botes que viajaban desde la Barra del Colorado hacia Puerto Viejo a recoger un grupo de turistas, fueron detenidos por autoridades de Nicaragua y obligados a devolverse hacia su punto de destino, lo que causó un gran trastorno a los turistas y a dicha Empresa, la que se vio obligada a alquilar aviones para trasladar a los turistas, doce de ellos suizos a la Barra del Colorado. También en esa oportunidad las autoridades de Nicaragua manifestaron que la navegación por el Río San Juan estaba prohibida hasta el 22 de este mes inclusive. En los botes viajaban, en disfrute de licencia y en ruta hacia el centro de nuestro país dos Guardias Rurales costarricenses, los señores Ramón Cunninghan Espinoza y Juan Arguida Núñez.

Por lo que dejo relatado debo presentar, como en verdad lo presento, una protesta por estos nuevos hechos hostiles y totalmente contrarios al derecho de libre y perpetua navegación, sin condiciones que tiene Costa Rica en el Río San Juan. Espero que el Gobierno de Nicaragua comprenda que deben terminar inmediatamente estas prácticas que alteran las relaciones diplomáticas existentes entre los dos países.

Quedo, consecuentemente, en la espera de las debidas explicaciones sobre los hechos ocurridos lo mismo que sobre los anteriores que he puesto en conocimiento del Gobierno de Nicaragua en notas anteriores.

Aprovecho la oportunidad para reiterar a Vuestra Señoría las muestras de mi más alta y distinguida consideración,

ORIGINAL FIRMADO Fernando Volio Jiménez

FERNANDO VOLIO JIMENEZ
Ministro de Relaciones Exteriores y Cult

Annex 44

NICARAGUAN CHARGÉ D'AFFAIRES TO COSTA RICA, OSCAR RAMÓN TÉLLEZ, TO COSTA RICAN FOREIGN MINISTER, FERNANDO VOLIO JIMÉNEZ, NOTE NO. E.N. 789/82, 2 AUGUST 1982

TRANSLATION

Embassy of Nicaragua
San José, Costa Rica

2 August, 1982

E.N. 789/82

Dear Minister:

I am addressing Your Excellency to refer to your notes N° D.N. 133-82, of 8 June; D.M. 126-82, of 16 July, and D.M. 127-82 of July, all of the present year, concerning Nicaragua's San Juan River.

The Government of Nicaragua, through me, wishes to inform the Illustrious Government of Costa Rica that it is not its intention, and it has never been, to deny in any way the rights of free navigation on the San Juan River, from its mouth up to three English miles before reaching Castillo Viejo, which were granted to the sister Republic of Costa Rica in the Treaty of Limits of 15 April 1858.

However, the Government of Nicaragua wishes to clarify some situations that have arisen concerning that free navigation right. As was established by the 1858 Treaty, the Republic of Nicaragua shall exclusively have the dominion and sovereign jurisdiction over the waters of the San Juan River, that is, the full sovereignty over said River, from its origin in the Lake up to its outlet in the Atlantic. Based on this eminent dominion that Nicaragua exercises over that part of its national territory, our country has the right to establish regulations over said river, which in no way are contrary to the right of free navigation that Costa Rica possesses.

In our opinion, the right of navigation in part of the San Juan River can never be interpreted as an obligation from Nicaragua not to exercise acts of sovereignty and jurisdiction over that part of its national territory, and over the vessels that navigate on it, particularly when these acts constitute the exercise of its right of defence and conservation. In other words, that within the essential attributes of sovereignty is included Nicaragua's inalienable right to adopt the necessary measures aimed to preserve its safety and internal order.

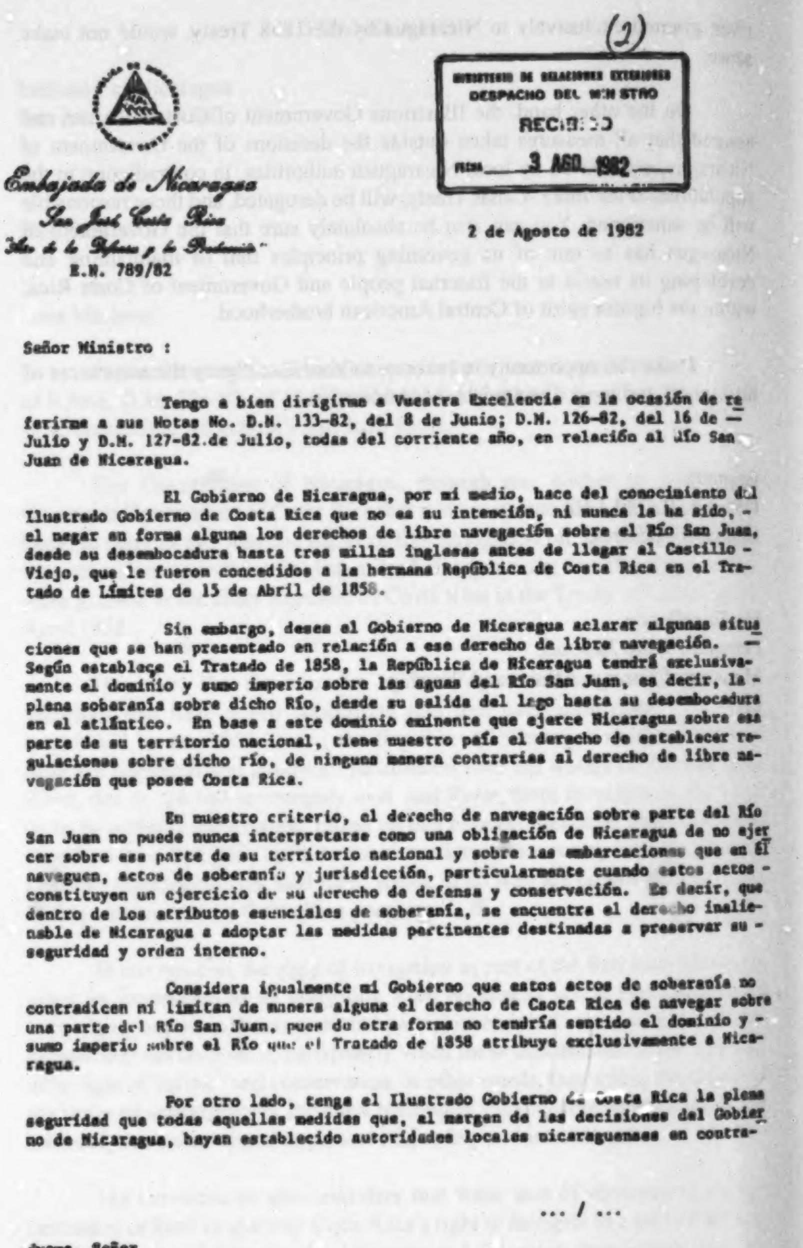
My Government also considers that these acts of sovereignty do not contradict or limit in any way Costa Rica's right to navigate in a part of the San Juan River, since otherwise the dominion and sovereign jurisdiction over the river, granted exclusively to Nicaragua by the 1858 Treaty, would not make sense.

On the other hand, the Illustrious Government of Costa Rica can rest assured that all measures taken outside the decisions of the Government of Nicaragua, established by local Nicaraguan authorities, in contradiction to the stipulations of the Jeréz -Cañas Treaty, will be derogated, and those responsible will be sanctioned. You can also be absolutely sure that the Government of Nicaragua has as one of its governing principles that of maintaining and developing its bonds to the fraternal people and Government of Costa Rica, within the highest spirit of Central American brotherhood.

I take this opportunity to reiterate to Your Excellency the assurances of his highest and most distinguished consideration.

(signed)
OSCAR. R. TÉLLEZ
Chargé d' Affaires, a.i.:

His Excellency
Fernando Volio Jiménez
Minister of Foreign Affairs and Worship
City



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MINISTERIO DE RELACIONES EXTERIORES
DESPACHO DEL MINISTRO
RECIBIDO
FECHA 3 AGO. 1982

Embajada de Nicaragua
San José Costa Rica
"Año de la Defensa y la Producción"
E.N. 789/82

2 de Agosto de 1982

Señor Ministro :

Tengo a bien dirigirme a Vuestra Excelencia en la ocasión de referirme a sus Notas No. D.M. 133-82, del 8 de Junio; D.M. 126-82, del 16 de Julio y D.M. 127-82.de Julio, todas del corriente año, en relación al Río San Juan de Nicaragua.

El Gobierno de Nicaragua, por mi medio, hace del conocimiento del Ilustrado Gobierno de Costa Rica que no es su intención, ni nunca la ha sido, el negar en forma alguna los derechos de libre navegación sobre el Río San Juan, desde su desembocadura hasta tres millas inglesas antes de llegar al Castillo Viejo, que le fueron concedidos a la hermana República de Costa Rica en el Tratado de Límites de 15 de Abril de 1858.

Sin embargo, desea el Gobierno de Nicaragua aclarar algunas situaciones que se han presentado en relación a ese derecho de libre navegación. Según estableçe el Tratado de 1858, la República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del Río San Juan, es decir, la plena soberanía sobre dicho Río, desde su salida del lago hasta su desembocadura en el atlántico. En base a este dominio eminente que ejerce Nicaragua sobre esa parte de su territorio nacional, tiene nuestro país el derecho de establecer regulaciones sobre dicho río, de ninguna manera contrarias al derecho de libre navegación que posee Costa Rica.

En nuestro criterio, el derecho de navegación sobre parte del Río San Juan no puede nunca interpretarse como una obligación de Nicaragua de no ejercer sobre esa parte de su territorio nacional y sobre las embarcaciones que en él naveguen, actos de soberanía y jurisdicción, particularmente cuando estos actos constituyen un ejercicio de su derecho de defensa y conservación. Es decir, que dentro de los atributos esenciales de soberanía, se encuentra el derecho inalienable de Nicaragua a adoptar las medidas pertinentes destinadas a preservar su seguridad y orden interno.

Considera igualmente mi Gobierno que estos actos de soberanía no contradicen ni limitan de manera alguna el derecho de Caota Rica de navegar sobre una parte del Río San Juan, pues de otra forma no tendría sentido el dominio y sumo imperio sobre el Río que el Tratado de 1858 atribuye exclusivamente a Nicaragua.

Por otro lado, tenga el Ilustrado Gobierno de Costa Rica la plena seguridad que todas aquellas medidas que, al margen de las decisiones del Gobierno de Nicaragua, hayan establecido autoridades locales nicaraguenses en contra-

... / ...

Excmo. Señor
Fernando Vilio Jiménez
Ministro de Relaciones
Exteriores y Culto
Ciudad.

Embajada de Nicaragua
San José, Costa Rica
"Año de la Defensa y la Producción"

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dición con lo estipulado en el Tratado Jeréz-Cañas serán derogadas y sancionados los responsables. Tengo, igualmente, la plena seguridad que el Gobierno de Nicaragua tiene como uno de sus principios rectores el de preservar y desarrollar sus vínculos con el hermano pueblo y Gobierno de Costa Rica, dentro de más alto espíritu de fraternidad centroamericana.

Aprovecho la oportunidad para reiterar a Vuestra Excelencia las muestras de su más alta y distinguida consideración.

OSCAR R. TELLEZ
Encargado de Negocios a.i.

Excmo. Señor
Fernando Volio Jiménez
Ministro de Relaciones
Exteriores y Culto
Ciudad.

Annex 45

COSTA RICAN FOREIGN MINISTER, FERNANDO VOLIO JIMÉNEZ,
TO NICARAGUAN CHARGÉ D'AFFAIRES A.I. TO COSTA RICA,
OSCAR RAMÓN TÉLLEZ,
NOTE NO. DM 189-82, 19 AUGUST 1982

TRANSLATION

Republic of Costa Rica
Ministry of Foreign Affairs and Worship

D.M. 189-82

San José, August 19, 1982

Dear Chargé d' Affaires:

I refer to the note sent by Your Excellency, N° E.N. 789/82, of 2 August, 1982, in which the Honourable Embassy of Nicaragua answers notes N° D.M. 133-82 of 8 June; D.M. 126-82 of 16 July, and D.M. 127-82 of 20 July, all three of the current year, concerning the San Juan River, where Costa Rica has a very important right.

I deplore that the Government of Nicaragua insists on denying what, by virtue of a standing treaty, belongs to Costa Rica, that is, the perpetual, perpetual, and inviolable right that its vessels navigate, without any condition, on the San Juan River. Therefore, the Government of Costa Rica cannot, and does not accept, the unilateral, unlawful, and capricious interpretation that the Government of Nicaragua gives the Cañas-Jerez Treaty of 1858, ratified by the Cleveland Award in 1888. Much less, it cannot and does not accept, the thesis of the Government of Nicaragua that this country has the right "to establish regulations over said river", in detriment of the right of Costa Rica, nor the thesis that Nicaragua has "the obligation" to "exercise acts of sovereignty and jurisdiction over that part of its national territory and over the vessels that navigate on it", in detriment of Costa Rica's right. This interpretation, which the Government of Costa Rica rejects, contradicts and limits what by virtue of the Treaty does not admit contradiction or limitation.

Your Excellency will understand that the reiteration of the interferences that are illegal and unlawful violations of the Treaty constitute unfriendly acts that seriously affect the relations between Costa Rica and Nicaragua. For this reason, the Government of Costa Rica expects that the Government of Nicaragua will put an end to such violations, which have not stopped since my last note of protest, because on the 8, 12, and 15 of this month, the Nicaraguan army continued with its acts of interference with free navigation, in detriment of Costa Rican tourist boats. They even raised the price of a badly called and even worse based "departure clearance certificate", which is a tax that is excluded in Article six of the Cañas-Jerez Treaty. Therefore, the Government of Costa Rica protests again for these interferences and does not accept the terms of the previously mentioned note.

I hope that this matter will be settled as soon as possible, for the benefit of the friendly and proper relations that Costa Rica wishes to maintain with Nicaragua.

I take this opportunity to reiterate to Your Excellency, my highest and most distinguished consideration.

FERNANDO VOLIO JIMENEZ
Minister of Foreign Affairs and Worship

Honourable
Oscar Ramón Tellez
Chargé d´Affaires, a.i.
Embassy of Nicaragua

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

D.M. 189-82

San José, 19 de agosto de 1982

Señor Encargado de Negocios:

Me refiero a la nota de Vuestra Excelencia No. E N. 789/82 del 2 de agosto de 1982 en la que la Honorable Embajada de Nicaragua contesta las notas Nos. D.M. 133-82 del 8 de junio; D.M. 126-82 del 16 de julio y D.M. 127-82 del 20 de julio, las tres de este año, en relación con el río San Juan, donde Costa Rica tiene un derecho de suma importancia. Deploro que el Gobierno de Nicaragua se empeñe en negar lo que por tratado en vigor le pertenece a Costa Rica, es decir, el derecho perpetuo, imprescriptible e inviolable a que sus embarcaciones naveguen, sin ninguna condición, por el río San Juan. Por lo tanto, el Gobierno de Costa Rica no puede aceptar, ni acepta, la interpretación unilateral, antijurídica y antojadiza que el Gobierno de Nicaragua le da al Tratado Cañas-Jerez de 1858, ratificado por el Laudo Cleveland en 1888. Mucho menos puede aceptar, y no acepta, la tesis del Gobierno de Nicaragua de que este país tiene el derecho de "establecer regulaciones sobre dicho río", en perjuicio del derecho de Costa Rica, ni la tesis de que Nicaragua tiene "la obligación" de "ejercer sobre esa parte de su territorio nacional y sobre las embarcaciones que en el naveguen, actos de soberanía y jurisdicción", en perjuicio del derecho de Costa Rica. Esa interpretación, que el Gobierno de Costa Rica rechaza, contradice y limita lo que por el Tratado no admite contradicción ni limitación.

Comprenderá Vuestra Señoría que la reiteración de las interferencias ilegales y violatorias del Tratado constituyen actos inamistosos que alteran seriamente las relaciones entre Costa Rica y Nicaragua. Por ese motivo, espera el Gobierno de Costa Rica que el Gobierno de Nicaragua ponga fin a tales violaciones, las cuales no se han interrumpi-

HONORABLE SEÑOR
OSCAR RAMON TELLEZ
ENCARGADO DE NEGOCIOS A.I.
EMBAJADA DE NICARAGUA
CIUDAD.-

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

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do desde mi última nota de protesta, puesto que los días 8, 12, y 15 del presente mes el ejército de Nicaragua continuó con sus actos de interferencia de la libre navegación, en perjuicio de naves costarricenses de turismo. Inclusive han aumentado el valor de un mal llamado y peor fundamentado "derecho de zarpe", lo que constituye un impuesto cuyo establecimiento está excluido por el artículo sexto del Tratado Cañas-Jerez. Por lo tanto, el Gobierno de Costa Rica protesta nuevamente por estas interferencias y rechaza los términos de la nota que contesto.

Espero que este asunto sea resuelto lo más pronto posible, en beneficio de las amistosas y correctas relaciones que Costa Rica desea mantener con Nicaragua.

Aprovecho la oportunidad para reiterar a Vuestra Señoría las muestras de mi más alta y distinguida consideración,

FERNANDO VOLIO JIMENEZ
Ministro de Relaciones Exteriores y Culto

Annex 46

AMBASSADOR OF NICARAGUA TO COSTA RICA, ROGELIO RAMÍREZ MERCADO, TO COSTA RICAN FOREIGN MINISTER, FERNANDO VOLIO JIMÉNEZ, NOTE NO. E.N. 865/82, 6 SEPTEMBER 1982

TRANSLATION

Embassy of Nicaragua
San José, Costa Rica

E.N. 865/ 82

September 6, 1982

Dear Minister:

I refer to the note sent by Your Excellency, DM/ 189-82, of 19 August of the current year, which responds our note N° E.N. 789/82 of 2 August, in which you refer once again to the San Juan River.

The Government of Nicaragua expresses its justified surprise for the terms of the note sent by Your Excellency, as well as its deep concern for the concepts expressed therein, since we see that the affirmations made in that note are extremely injurious to Nicaragua's sovereignty over the San Juan River, and they are inadmissible to our country, from every point of view.

As was pointed out in our note of 2 August, the 1858 Treaty and the Cleveland Award are categorical in determining that Nicaragua, and only Nicaragua, has the exclusive dominion and sovereign jurisdiction over the San Juan River, that is to say, full sovereignty and eminent domain, granting Costa Rica a simple right of free navigation, subject to several limitations. Therefore, Nicaragua has not made a unilateral, unlawful, and much less, capricious interpretation, as Your Excellency expressed in an excessive rhetoric, but rather a reaffirmation of Nicaragua's sovereignty over the San Juan River, totally in accordance with standing international instruments between our countries.

We consider that the statements made in the note sent by Your Excellency, in the sense of disclaiming Nicaragua's inalienable right to establish regulations in the San Juan River, and to exercise acts of sovereignty and jurisdiction over that part of its national territory and over the vessels that navigate on it, disown Nicaragua's sovereignty over the San Juan River, and impugn the border agreements and treaties, an extremely dangerous and arbitrary attitude, that goes against international regulations on this subject. That interpretation seeks to turn a simple right of free navigation into a common ownership, because only from that point of view, could we understand the affirmations made by Your Excellency.

However, and this is registered in several instruments known by Your Excellency, the San Juan River is a river absolutely Nicaraguan, and on the base of this unquestionable reality Nicaragua has exercised, exercises, and will continue to exercise all the attributes of its sovereignty, without any detriment to Costa Rica's right to free navigation, that will continue to be respected by Nicaragua, as opposed to what Your Excellency states in your note, within the limits established in the standing treaties, free navigation that will be respected, moreover, to the extent that Costa Rica respects Nicaragua's sovereignty over the San Juan River. Free navigation to the degree that such right is not used to harm the national interests, alter the order and peace of the nation, attempt against Nicaragua's territorial integrity, or to disrespect the rights that international norms recognize to the sovereign States.

Therefore, the Government of Nicaragua finds the attitude of Your Excellency very strange, because we see in it an attempt to ignore what is already established, and a disrespect to our condition as sovereign State, for which we are emphatic in rejecting the note sent by Your Excellency, hoping that the Illustrious Government of Costa Rica will assume the obligations already contained in the International Treaties, since on our part we are in the best disposition to respect what those treaties stipulate.

Finally, regarding the purported taxes that according to Your Excellency are being charged by our authorities in the zone, proper measures have already been adopted to prohibit that practice, if it were true they were being demanded, in accordance with that stipulated in the 1858 Treaty.

I take this opportunity to reiterate to Your Excellency, the assurances of consideration and esteem.

ROGELIO RAMIREZ MERCADO
AMBASSADOR

His Excellency
FERNANDO VOLIO JIMÉNEZ
Minister of Foreign Affairs and Worship
City

MINISTERIO DE RELACIONES EXTERIORES
DESPACHO DEL MINISTRO
RECIBIDO
FECHA 17 SET. 1982

Embajada de Nicaragua
San José, Costa Rica
"Año de la Defensa y la Producción"

E.N. 865/82

Septiembre 6, 1982

Señor Ministro:

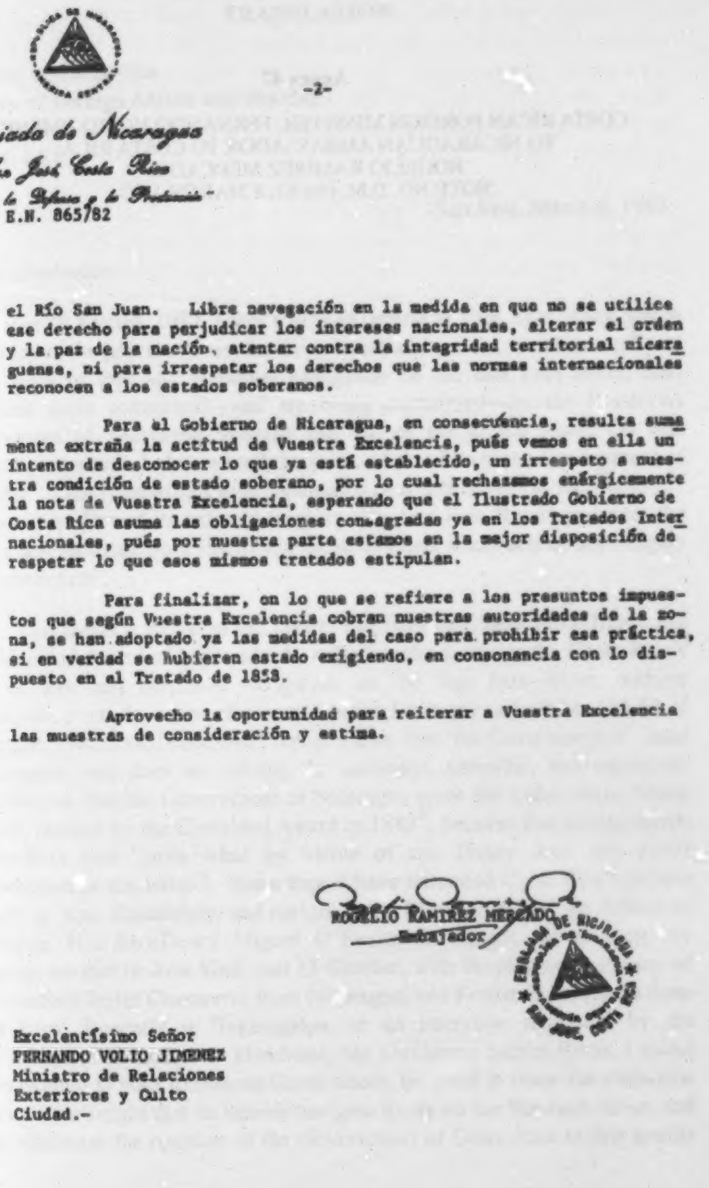
Tengo a bien referirme a la nota de Vuestra Excelencia, DM/189-82 del 19 de Agosto de los corrientes, respuesta a nuestra nota No. E.N. 789/82 del 2 de Agosto, en la que se refiere nuevamente al Río San Juan.

El Gobierno de Nicaragua manifiesta su justificada sorpresa por los términos de la nota de Vuestra Excelencia, así como su profunda preocupación por los conceptos en ella vertidos, pués observamos se hacen en dicha nota afirmaciones lesivas en grado sumo a la soberanía de Nicaragua sobre el Río San Juan, inadmisibles desde todo punto de vista para nuestro país.

Como señalamos en nuestra nota del 2 de Agosto, el Tratado de 1858 y el Laudo Cleveland son categóricos al determinar que a Nicaragua y solo a Nicaragua le corresponden exclusivamente el dominio y sumo imperio sobre el Río San Juan, es decir, la soberanía plena, el dominio eminente, otorgándole a Costa Rica un simple derecho de libre navegación sujeto a múltiples limitaciones. No hay por lo tanto, por parte de Nicaragua, ninguna interpretación unilateral, antijurídica y muchos menos antojadiza, como expresa en un exceso de retórica Vuestra Excelencia, sino la reafirmación de la soberanía de Nicaragua sobre el Río San Juan, ajustada plenamente a los instrumentos internacionales en vigor entre nuestros paises.

Consideramos que las afirmaciones contenidas en la nota de Vuestra Excelencia, en el sentido de desconocer el derecho inalienable de Nicaragua de establecer regulaciones sobre el Río San Juan y de ejercer sobre esa parte de su territorio nacional y sobre las embarcaciones y personas que en el naveguen actos de soberanía y jurisdicción, constituyen un desconocimiento de la soberanía nicaraguense sobre el Río San Juan y una impugnación de los acuerdos y tratados limítrofes, actitud en extremo peligrosa, arbitraria y opuesta totalmente a las normas internacionales sobre la materia. Esa interpretación pretende convertir un simple derecho de libre navegación en un condominio, pués únicamente desde esa óptica podrían comprenderse las afirmaciones de Vuestra Excelencia.

No obstante, y esto consta en múltiples instrumentos que Vuestra Excelencia conoce, el Río San Juan es un río absolutamente nicaraguense, y en base a esta realidad inobjetable Nicaragua ha ejercido, ejerce y seguirá ejerciendo todos los atributos de su soberanía, sin menoscabo alguno del derecho de Costa Rica a la libre navegación, que seguirá siendo respetado por Nicaragua, al contrario de lo que expresa Vuestra Excelencia en su nota, dentro de los límites establecidos en los tratados vigentes, libre navegación que será respetada, por demás, en la medida en que Costa Rica respete la soberanía de Nicaragua sobre



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Embajada de Nicaragua
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el Río San Juan. Libre navegación en la medida en que no se utilice ese derecho para perjudicar los intereses nacionales, alterar el orden y la paz de la nación, atentar contra la integridad territorial nicaraguense, ni para irrespetar los derechos que las normas internacionales reconocen a los estados soberanos.

Para al Gobierno de Nicaragua, en consecuéncia, resulta sumamente extraña la actitud de Vuestra Excelencia, pués vemos en ella un intento de desconocer lo que ya está establecido, un irrespeto a nuestra condición de estado soberano, por lo cual rechazamos enérgicamente la nota de Vuestra Excelencia, esperando que el Ilustrado Gobierno de Costa Rica asuma las obligaciones consagradas ya en los Tratados Internacionales, pués por nuestra parte estamos en la mejor disposición de respetar lo que esos mismos tratados estipulan.

Para finalizar, en lo que se refiere a los presuntos impuestos que según Vuestra Excelencia cobran nuestras autoridades de la zona, se han adoptado ya las medidas del caso para prohibir esa práctica, si en verdad se hubieren estado exigiendo, en consonancia con lo dispuesto en al Tratado de 1858.

Aprovecho la oportunidad para reiterar a Vuestra Excelencia las muestras de consideración y estima.

ROGELIO RAMIREZ MERCADO
Embajador

Excelentísimo Señor
FERNANDO VOLIO JIMENEZ
Ministro de Relaciones
Exteriores y Culto
Ciudad.-

Annex 47

COSTA RICAN FOREIGN MINISTER, FERNANDO VOLIO JIMÉNEZ, TO NICARAGUAN AMBASSADOR TO COSTA RICA, ROGELIO RAMÍREZ MERCADO, NOTE NO. D.M. 014-83, 8 MARCH 1983

TRANSLATION

Republic of Costa Rica
Ministry of Foreign Affairs and Worship

D.M. 014-83

San José, March 8, 1983.

Dear Ambassador:

On 19 August, 1982, I sent a note of protest to Your Excellency, which was added to the previous ones, for the constant and serious violations to Costa Rica's right of free and perpetual navigation on the San Juan River. Said violations were committed—and are being committed—by the Illustrious Government of Nicaragua, through the use of the armed force. On that occasion, moreover, I also refuted the thesis of that Illustrious Government of it having "…the right to establish regulations over that River" as well as to "… exercise over part of its national territory (the San Juan River) and over the vessels that navigate on it (including those of Costa Rica) acts of sovereignty and jurisdiction".

This thesis is unlawful and clearly infringes the Cañas-Jerez Treaty and the Cleveland Award of 1888, which ratified, without any doubt, Costa Rica's right of free and perpetual navigation on the San Juan River, without regulations, controls, or interferences. I refuted it in my note D.M. 189-82 of 19 August, 1982. I said then, and I repeat it now, that "the Government of Costa Rica cannot, and does not accept, the unilateral, unlawful, and capricious interpretation that the Government of Nicaragua gives the Cañas-Jerez Treaty of 1858, ratified by the Cleveland Award in 1888", because that interpretation "contradicts and limits what by virtue of the Treaty does not admit contradiction or limitation". Since then, I have reiterated Costa Rica's protest verbally to Your Excellency, and mainly to the Minister of Foreign Affairs of Nicaragua, His Excellency Miguel D'Escoto Brockman, when upon my invitation we met in New York, last 13 October, with the pleasant company of Ambassadors Javier Chamorro, from Nicaragua, and Fernando Zumbado from Costa Rica. Recently in Tegucigalpa, in an interview requested by the Ambassador of Nicaragua in Honduras, Mr. Guillermo Suárez Rivas, I asked him to explain to your Illustrious Government, the need to cease the violations to Costa Rica's right that its vessels navigate freely on the San Juan River, and not to minimize the reaction of the Government of Costa Rica to this hostile act.

His Excellency
Rogelio Ramírez Mercado
Ambassador of the Republic of Nicaragua

I must now submit a new note of protest, based on the events suffered by Costa Rican journalists Mr. Edgar Fonseca and Mr. Mario Castillo, from the "La Nación" Newspaper, and Mr. José Angel Moya, from the radio news "La Voz de San Carlos" when on 23 February of this year they attempted to make a report of the facts denounced by the Government of Costa Rica in regards to the San Juan River.

These journalists narrated in articles in "La Nación" and in "La Voz de San Carlos", that their rights as professionals dedicated to finding and freely divulging information on what is occurring in the San Juan River, where violated. The violation was committed by members of the Sandinista Popular Army, taking advantage of the force of their arms, which allowed these arbitrary authorities to confiscate their note pads, photographic films, and a tape containing recordings of what they were investigating. The journalists verified for themselves, and through the testimonies of people from the zone, that the Sandinista Popular Army has a total and illegal control over the navigation of Costa Rican vessels on the San Juan River, which causes serious complications in the activities of the Costa Ricans. They could even verify that said authorities even totally impeded navigation from 18:00 hours to 6:00 hours, which also constitutes a serious violation to the Cañas-Jerez Treaty.

For all this, and because the Illustrious Government of Nicaragua persists in its unlawful and hostile attitude, which constitutes a serious cause of tension between Costa Rica and Nicaragua, I must protest once again for the facts mentioned above, which reflect a form of conduct of the Illustrious Government of Nicaragua, that is totally contrary to the norms of standing international law. I beg Your Excellency to transmit this protest, and I trust that the Illustrious Government of Nicaragua understands that this is a Costa Rican national cause, and because of this, the Government of Costa Rica will not yield in its effort to claim what in the Law rightfully pertains to the Costa Rican State.

I take this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

FERNANDO VOLIO JIMÉNEZ
Minister of Foreign Affairs and Worship

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

D.M. 014-83

San José, 8 de marzo de 1983

Señor Embajador:

El 19 de agosto de 1982 envié a Vuestra Excelencia una nota de protesta, que se unió a otras anteriores, por las constantes y graves violaciones al derecho que tiene Costa Rica a la libre y perpetua navegación en el Río San Juan. Dichas violaciones las realizaba - y las realiza - el Ilustrado Gobierno de Nicaragua, mediante el uso de la fuerza armada. En esa oportunidad, asimismo, refuté la tesis de ese Ilustrado Gobierno de que él tiene "... el derecho de establecer regulaciones sobre dicho Río", lo mismo que de "...eejercer sobre parte de su territorio nacional (el Río San Juan) y sobre las embarcaciones que en él naveguen, (incluidas las de Costa Rica), actos de soberanía y jurisdicción".

La anterior tesis es antijurídica y claramente violatoria del Tratado Cañas-Jerez y del Laudo Cleveland de 1888, que ratificó, sin lugar a ninguna duda, el derecho de Costa Rica a la libre y perpetua navegación en el Río San Juan, sin regulaciones, controles ni interferencias. La refuté en mi nota D.M. 189-82 del 19 de agosto del año pasado. Dije entonces y reitero ahora que "el Gobierno de Costa Rica no puede aceptar, ni acepta, la interpretación unilateral, antijurídica y antojadiza que el Gobierno de Nicaragua da al Tratado Cañas-Jerez de 1856, ratificado por el Laudo Cleveland de 1888", en vista de que tal interpretación "contradice y limita lo

Excelentísimo Señor
Rogelio Ramírez Mercado
Embajador de la República de Nicaragua
CIUDAD.-

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

que en el Tratado no admite contradicción ni limitación". Desde entonces he reiterado la protesta de Costa Rica en forma verbal ante Vuestra Excelencia, y sobre todo, ante el Ministro del Exterior de Nicaragua, Su Excelencia don Miguel D'Escoto Brockman, cuando nos reunimos por invitación mía, en Nueva York, el 13 de octubre pasado, con la grata compañía de los Embajadores don Javier Chamorro, de Nicaragua, y don Fernando Zumbado, de Costa Rica. Recientemente, en Tegucigalpa, en entrevista que me solicitó el señor Embajador de Nicaragua ante el Gobierno de Honduras, don Guillermo Suárez Rivas, le pedí que lo hiciera ver a su Ilustrado Gobierno la necesidad de que cesaran las violaciones al derecho de Costa Rica a que sus embarcaciones naveguen libremente en el Río San Juan, y que no minimizara la reacción del Gobierno de Costa Rica ante ese hecho hostil.

Ahora debo presentar una nueva nota de protesta, fundada en los hechos de que fueron víctimas los periodistas costarricenses don Edgar Fonseca y don Mario Castillo, del Periódico "La Nación", y don José Angel Moya, del Radioperiódico "La Voz de San Carlos", cuando el día 23 de febrero de este año trataron de realizar un reportaje sobre los hechos que ha denunciado el Gobierno de Costa Rica relativos al Río San Juan.

Dichos periodistas relataron en reportajes de "La Nación" y de "La Voz de San Carlos", que fueron violados sus derechos como profesionales dedicados a buscar y difundir libremente informaciones sobre lo que ocurre en el Río San Juan. La violación la cometieron miembros del Ejército Popular Sandinista, prevaleciéndose de la fuerza de las armas, que permitió a dichas autoridades arbitrarias decomisar las libretas de apuntes, los rollos fotográficos y una cinta que contenía grabaciones sobre lo que investigaban. Los periodistas constataron ellos mismos y por testimonios de vecinos, que el Ejército Popular Sandinista ejerce un control total e ilegal sobre la na

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

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vegación de naves costarricenses en el Río San Juan, lo que causa serios trastornos a las actividades de los costarricenses. Incluso pudieron constatar que las citadas autoridades llegan hasta impedir del todo la navegación de las 18:00 horas a las 6:00 horas, lo que también constituye una grave violación al Tratado Cañas-Jerez.

Por todo lo anterior, y en vista de que el Ilustrado Gobierno de Nicaragua persiste en su actitud antijurídica y hostil, que constituye una seria causa de tensión entre Costa Rica y Nicaragua, debo protestar de nuevo por los hechos que dejo relatados, los cuales reflejan una forma de conducta del Ilustrado Gobierno de Nicaragua, totalmente contraria a las normas del derecho internacional vigente. Ruego a Vuestra Excelencia trasmitir esta protesta y confío en que el Ilustrado Gobierno de Nicaragua comprenda que se trata de una causa nacional costarricense y que, por ello, el Gobierno de Costa Rica no cederá en el propósito de reclamar lo que en Derecho le pertenece al Estado costarricense.

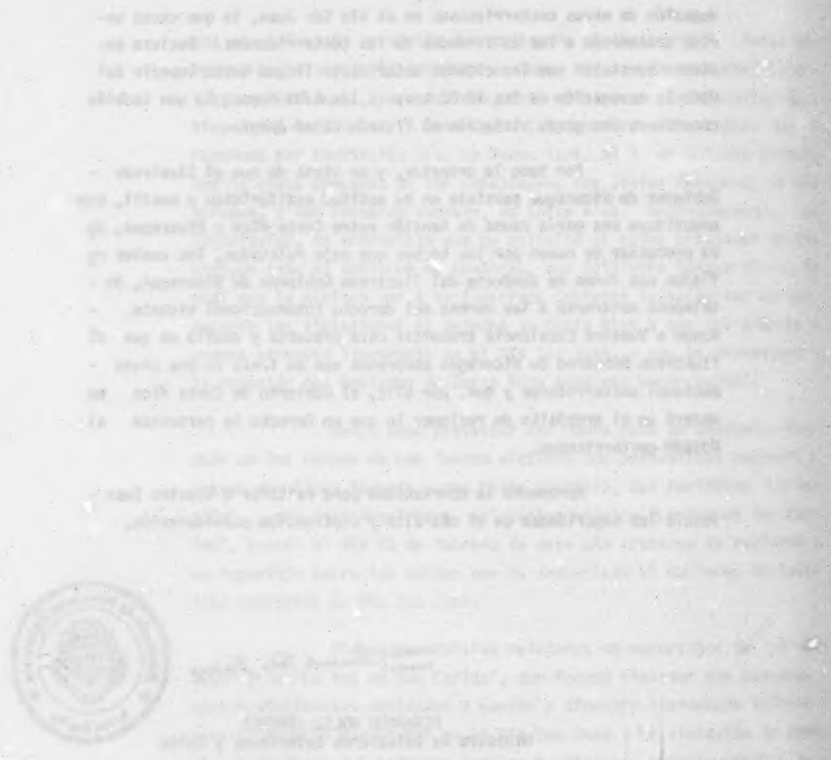
Aprovecho la oportunidad para reiterar a Vuestra Excelencia las seguridades de mi más alta y distinguida consideración,

ORIGINAL FIRMADO } Fernando Volio Jiménez

FERNANDO VOLIO JIMENEZ
Ministro de Relaciones Exteriores y Culto

Annex 48

NICARAGUAN FOREIGN MINISTER, ERNESTO LEAL SÁNCHEZ, TO COSTA RICAN FOREIGN MINISTER, BERND NIEHAUS QUESADA, NOTE NO. 940284, 21 MARCH 1994



TRANSLATION

Ministry of Foreign Affairs
Managua, Nicaragua

March 21, 1994
Nº 940284

Dear Minister:

I have the honor to address Your Excellency to refer to your note of dated San Jose, March 15, 1994, which mentions the alleged charge of a "transit toll to Costa Rican vessels that navigate on the San Juan with the purpose of transporting tourists." [*con el objeto de transportar turistas*].

In this regard, the Government of Nicaragua wishes to make the following observations:

1. The Cañas-Jerez Border Treaty granted to the Republic of Nicaragua "exclusively the dominion and sovereign jurisdiction over the waters of the San Juan, from its origin in the Lake to its mouth in the Atlantic." That is to say, by virtue of that Treaty, Nicaragua exercises full sovereignty, control, and jurisdiction over the San Juan.

2. On the other hand, the Treaty mentioned establishes that the Republic of Costa Rica "shall have the perpetual right of free navigation in the said waters, between the said mouth and the point three English miles distant from Castillo Viejo, said navigation being *con objetos de comercio*" and not for other type of activities. Therefore, the expression in the Treaty "***con objetos de comercio***," excludes any other activity, and the terms of the Treaty should be interpreted in the standard sense they had at that time and, being it a Treaty of Limits, it should be interpreted in a restrictive way.

3. The charge for the Tourist Card is not a transit toll, but a measure of migratory control. In any case, we must remember that Costa Rica's perpetual right of free navigation, in the portion indicated in the Treaty does not include tourism, and much less the free access to Nicaragua's sovereign territory to foreign citizens who travel in Costa Rican vessels that navigate on said River, "for the purpose of transporting tourists", as your own note states.

4. The Cañas-Jerez Treaty does not limit in any way the exercise of Nicaragua's Sovereign Rights to establish the necessary migratory and security controls, along and across the whole San Juan from its origin in the Lake to its mouth in the Atlantic.

5. In conformity with these sovereign rights the Government of Nicaragua has established Migratory Control Posts to regulate the payment of

the entry visa of citizens of those countries that, according to the Treaties in force, are not exempted from this requirement.

The Government of Nicaragua does not charge any type of tax to the Costa Rican vessels that dock on the banks of the San Juan River, in the part in which navigation is common, when they navigate "*con objetos de comercio*".

I take this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

Ernesto Leal Sánchez
Minister

His Excellency
Dr. Bernd Niehaus Quesada
Minister of Foreign Affairs and Worship
of the Republic of Costa Rica
Ministry of Foreign Affairs
Managua, Nicaragua

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MINISTERIO
DE
RELACIONES EXTERIORES
Managua, Nicaragua

21 de Marzo de 1994.
[illegible]

Señor Ministro:

Tengo el honor de dirigirme a Vuestra Excelencia en ocasión de referirme a su Nota fechada San José, 15 de Marzo de 1994 en la cual se hace referencia al supuesto cobro de "un impuesto de peaje a embarcaciones costarricenses, que navegan por el Río San Juan, con el objeto de transportar turistas".

Al respecto el Gobierno de Nicaragua desea formular las siguientes consideraciones:

1. El Tratado de límites Cañas-Jeréz otorgó a la República de Nicaragua, "exclusivamente, el dominio y sumo imperio sobre las aguas del Río San Juan, desde su salida del Lago, hasta su desembocadura en el Atlántico". Es decir, en virtud de este Tratado, Nicaragua ejerce plena soberanía, control y jurisdicción sobre el Río San Juan.

2.Por otra parte, el referido Tratado establece que la República de Costa Rica "tendrá en dichas aguas los derechos perpetuos de libre navegación, desde la expresada desembocadura hasta 3 millas inglesas antes de llegar al Castillo Viejo con objetos de comercio" y no para otro tipo de actividades. De allí que la frase del Tratado "con objetos de comercio" excluye cualquier otra actividad, debiéndose interpretar los términos del Tratado en el sentido corriente que tenían en aquella época y, por ser un Tratado de Límites, interpretarse de manera restrictiva.

3.El cobro de la Tarjeta de Turismo no es un impuesto de peaje, sino una medida de control migratorio. En todo caso, debe recordarse que los derechos perpetuos de libre navegación de Costa Rica, en el trecho que señala el Tratado, no incluyen el turismo y, mucho menos, el libre acceso al territorio soberano de Nicaragua de ciudadanos extranjeros, que viajan en embarcaciones costarricenses que navegan por el citado Río "con el objeto de transportar turistas", como lo señala la propia Nota.

4.El Tratado Cañas-Jeréz no limita de ninguna manera el ejercicio de los Derechos Soberanos de Nicaragua a disponer los controles migratorios y de seguridad necesarios a lo largo y ancho del Río San Juan en toda su extensión, desde su salida del Lago hasta su desembocadura en el Atlántico.

5.De conformidad con estos derechos de soberanía el Gobierno de Nicaragua ha establecido Puestos de Control Migratorio a fin de regular el cobro de Visa de Ingreso a ciudadanos de países que, de acuerdo a los Tratados suscritos, no están exentos de este requisito.

Al Excelentísimo Señor
DR. BERND NIEHAUS QUESADA
Ministro de Relaciones Exteriores y Culto
de la República de Costa Rica

**MINISTERIO
DE
RELACIONES EXTERIORES**

Managua, Nicaragua

- 2 -

El Gobierno de Nicaragua no cobra ninguna clase de impuestos a las embarcaciones costarricenses que atracan en las riberas del Río San Juan, en la parte en que la navegación es común, cuando navegan "con objetos de comercio".

Hago propicia la ocasión para renovar a Vuestra Excelencia las muestras de mi más alta y distinguida consideración.

Ernesto Leal Sánchez
Ministro

Annex 49

NICARAGUAN ACTING MINISTER OF FOREIGN AFFAIRS, CARLOS R. GURDÍAN DEBAYLE, TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, NOTE NO. VM/08/0685/98, 11 AUGUST 1998

TRANSLATION

(Seal of the
Republic of Nicaragua,
Central America)
MINISTRY OF FOREIGN AFFAIRS
Managua, Nicaragua

11 August 1998

No.: VM/08/0685/98

Dear Minister:

I have the honour to address Your Excellency on the matter of referring to the Joint Communiqué dated 30 July 1998 and undersigned by the Nicaraguan Minister of Defence, Mr Jaime Cuadra, and the Costa Rican Minister of Government, Police and Public Security, Mr. Juan Rafael Lizano.

In this regard, having revised and analyzed the aforementioned document exhaustively, the Government of the Republic of Nicaragua has concluded that, in accordance with our Political Constitution, the said document fundamentally lacks the power of a legally binding document and, therefore, does not admit regulations, forcing the Government of Nicaragua to declare it legally null and void and non-existent.

In this sense, I request that Your Excellency kindly take note of the above and inform the appropriate authorities of Your Illustrious Government and, in particular, the Public Security authorities.

The Government of the Republic of Nicaragua reiterates its willingness to continue working in accordance with the international legal documents that state Nicaragua and Costa Rica's rights pertaining to the San Juan River, in the interests of strengthening the bonds of friendship and cooperation that unite our nations and governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest and most distinguished consideration.

(signature)
Carlos R. Gurdian Debayle
Acting Minister of Foreign Affairs

His Excellency
Roberto Rojas López
Minister of Foreign Affairs and Worship
Republic of Costa Rica
His Office

**MINISTERIO
DE
RELACIONES EXTERIORES**

Managua, Nicaragua

11 de agosto de 1998

Nº: VM\08\0685\98

Señor Ministro:

Tengo a bien dirigirme a Vuestra Excelencia en ocasión de referirme al Comunicado Conjunto que con fecha 30 de julio de 1998, suscribieran el Ministro de Defensa de Nicaragua, Don Jaime Cuadra con el Ministro de Gobernación, Policía y Seguridad Pública de Costa Rica, Don Juan Rafael Lizano.

A este respecto, el Gobierno de la República de Nicaragua habiendo revisado y analizado exhaustivamente el documento antes referido, ha podido constatar con base en nuestra Constitución Política que el mismo carece de la fuerza legal sustantiva y en consecuencia no admite reglamentación, obligando al Gobierno de Nicaragua a considerarlo jurídicamente nulo e inexistente.

En este sentido, solicito a Vuestra Excelencia tomar debida nota de lo expresado anteriormente y comunicarlo a las autoridades competentes de Vuestro Ilustrado Gobierno y en particular a las autoridades de Seguridad Pública.

El Gobierno de la República de Nicaragua reitera su disposición de continuar trabajando con base en los instrumentos jurídicos internacionales que determinan los derechos de Nicaragua y Costa Rica en el Río San Juan, en favor del estrechamiento de los vínculos de amistad y cooperación que unen a nuestros pueblos y gobiernos.

Hago propicia la ocasión para manifestar a Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

Carlos J. Gurdián Debayle
Ministro de Relaciones Exteriores por la Ley

Annex 50

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS, TO NICARAGUAN ACTING FOREIGN MINISTER, CARLOS R. GURDIÁN DEBAYLE, NOTE NO. DM-097-98, 12 AUGUST 1998

TRANSLATION

The Minister of Foreign Affairs and Worship

San Jose, 12 August 1998
DM-097-98

Your Excellency:

I address Your Excellency to acknowledge receipt of and reply to your letter No. VM 08/0685/98 of August 11, 1998, in which you inform me that the Government of Nicaragua considers the Joint Communiqué signed on July 30 of the current year by the Nicaraguan Minister of Defence, Mr. Jaime Cuadra, and the Costa Rican Minister of Public Security, Mr. Juan Rafael Lizano, null and unconstitutional.

Your letter, Minister, does not explain the reasons on which your Government based this decision of nullity and non-existence.

With respect to Costa Rica's navigation rights in the San Juan River, my Government sustains the same position it has always upheld, in that it is the treaties and other norms of International Law which should prevail in the relations between the both States. In this regard, I reiterate the fact that the Government of Costa Rica complies with all the points set down in the Cañas-Jerez treaty of 1858, the Cleveland Award of 1888 and the Central American Court's judgement of September 30, 1916.

In effect, articles 4, 6 and 9 of the Cañas-Jerez treaty, in addition to the right of free navigation with purposes of commerce, establish Costa Rica's obligations of a defensive nature in the San Juan River and very clearly forbid both countries from carrying out hostile acts there:

> "Article 4: (…) Costa Rica shall also be bound, as far as the portion of the banks of the San Juan river which correspond to it is concerned, on the same terms that by treaties is Nicaragua, to contribute to its custody in the same way as the two Republics shall contribute to the defence of the river in case of external aggression (…)"

> "Article 6: The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between

> the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce (…)"
>
> "Article 9: Under no circumstances, and even in case that the Republics of Costa Rica and Nicaragua should unhappily find themselves in a state of war, neither of them shall be allowed to commit any act of hostility against the other, whether in the port of San Juan del Norte, or in the San Juan river, or the Lake of Nicaragua".

In accordance with point II of the Cleveland Award, Costa Rica's rights of free navigation exclude navigating the river with vessels of war, but expressly authorizes it with vessels of the Revenue Service or as may be necessary for the protection of the enjoyment of the commercial navigation:

> "Second. –The Republic of Costa Rica under said Treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the San Juan River with vessels of war; but she may navigate said river with such vessels of the Revenue Service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment".

Given the above, it is not understood how she can exercise the fiscal custody or protection of commercial navigation in the San Juan River, to which the Cleveland Award expressly refers, if the Costa Rican Civil Guard cannot navigate the river with its service arms, in vessels that are not vessels of war.

Bear in mind that even before the existence of the Lizano-Cuadra Communiqué, this international ruling recognizes the Costa Rican right to navigate with vessels of the revenue service or as may be related to the protection of commercial navigation.

On the other hand, the Central American Court of Justice judgement of 30 September 1916 expressly ratifies that Costa Rica has a perpetual and inalterable real right of use, for navigation on the lower San Juan, with commercial, fiscal and defensive purposes. In this respect, the said ruling states the following:

> "(…) Costa Rica has in the San Juan, for purposes of commerce, the permanent rights of free navigation from its mouth up to within three miles of Castillo Viejo; and she may bring her vessels to, on either shore indiscriminately, without its being permissible to charge her any dues in the part where

> the navigation is common. It is therefore plain that the dominion which the Republic of Nicaragua exercises over the San Juan River is not absolute or unlimited; it is necessarily restricted by the rights of free navigation attached thereto and so remarkably granted to Costa Rica, especially if we consider that such rights, exercised for fiscal and defensive purposes, are confounded in their development, in the opinion of treatise writers, with the sovereign faculties of imperium. Such a concession is equivalent to a real right of use, perpetual and inalterable, which places the Republic of Costa Rica in the full enjoyment of the ownership for practical purposes of a large part of the San Juan River, without prejudice to the full ownership which Nicaragua preserves as sovereign of the territory…appears evident…b) The idea that the rights of navigation granted to Costa Rica on the San Juan River do not extend to war vessels, but simply to vessels for fiscal and defensive purposes; this being an interpretation which in no way weakens the doctrine set forth regarding the practical ownership which Costa Rica has of a large part of the San Juan River; for navigation with war vessels, besides being likely to constitute a cause of uneasiness, would imply a function peculiar to territorial sovereignty, (…)".

For all of the above reasons, Minister, my Government, whilst reasserting its respect for Nicaragua's sovereignty over the San Juan River, reaffirms Costa Rica's right to navigate the part of the San Juan River stipulated in the Cañas-Jerez treaty with vessels other than those of war.

Costa Rica has every intention of maintaining amicable relations with Nicaragua, as demonstrated by the moderation exercised by Costa Rican Government officials, beginning with the President of the Republic himself, Mr. Miguel Angel Rodríguez, so as not to aggravate the situation or fuel tensions by making hostile declarations. However, this does not mean that the Costa Rican Government is prepared to renounce the rights acknowledged in the aforementioned treaty, award and judgement, or allow them to be restricted.

In regard to your Illustrious Government's willingness to work based on the international legal documents that determine Nicaragua's and Costa Rica's rights on the San Juan River, expressed in your letter, I should like to reiterate that Costa Rica has never intended to exercise more or less rights other than those granted by said instruments and, in this respect, it reiterates its readiness to maintain the channels of negotiation that should always exist between sister nations open, insofar as Nicaragua is equally willing and prepared to appoint appropriately authorized persons to carry out negotiations.

In view of the above, I would like to request Your Excellency to indicate the steps which should be taken in order that the goodwill expressed in your letter may result in the appropriate resolution to this dispute.

I avail myself of this opportunity to renew the assurance of my highest consideration,

(signature)
Roberto Rojas

His Excellency
Carlos Gurdian Debayle
Acting Minister of Foreign Affairs
Managua, Nicaragua

El Ministro de Relaciones Exteriores y Culto

San José, 12 de agosto de 1998
DM-097-98

Excelentísimo señor:

Me dirijo a Vuestra Excelencia en ocasión de acusar recibo y dar respuesta a su nota N° VM 08/0685/98 de 11 de agosto de 1998, en la cual me expresa que el Gobierno de Nicaragua considera nulo e inconstitucional el Comunicado Conjunto suscrito el 30 de julio del presente año por el Ministro de Defensa de Nicaragua Don Jaime Cuadra y el de Seguridad Pública de Costa Rica, Don Juan Rafael Lizano.

Su nota no aclara, señor Ministro, los motivos en que funda su Gobierno la consideración de nulidad e inexistencia.

En relación con los derechos de navegación de Costa Rica en el río San Juan, mi Gobierno sustenta la misma posición que ha mantenido en todo momento, en el sentido de que los tratados y demás normas del Derecho Internacional son los que deben presidir las relaciones entre ambos Estados. Al respecto, le reitero que el Gobierno de Costa Rica se ajusta en todos sus extremos a lo dispuesto por el tratado Cañas-Jerez de 1858, el Laudo Cleveland de 1888 y la sentencia de la Corte de Justicia Centroamericana de 30 de setiembre de 1916.

Precisamente, los artículos 4, 6 y 9 del tratado Cañas-Jerez, además del derecho de libre navegación con objetos de comercio, establece para Costa Rica obligaciones de carácter defensivo en el río San Juan, y bien claramente prohíbe a ambos países ejercer actos de hostilidad allí:

> "Artículo 4: (...) También estará obligada Costa Rica, por la parte que le corresponde en las márgenes del río de San Juan, en los mismos términos que por tratados lo está Nicaragua, a concurrir a la guarda de él, del propio modo que concurrirán las dos Repúblicas a su defensa en caso de agresión exterior (...)"

> "Artículo 6: La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del Río San Juan desde su salida del Lago hasta su desembocadura en el Atlántico; pero la República de Costa Rica tendrá en dichas aguas los perpetuos derechos de libre navegación, desde la expresada desembocadura hasta tres millas inglesas antes de llegar al Castillo Viejo, con objetos de comercio (...)"

> "Artículo 9: Por ningún motivo, ni en caso de guerra, en que por desgracia llegasen a encontrarse las Repúblicas de Nicaragua y Costa Rica, les será permitido ejercer ningún acto de hostilidad entre ellas en el puerto de San Juan del Norte, ni en el río de este nombre y Lago de Nicaragua".

Conforme al punto II del Laudo Cleveland, los derechos de libre navegación de Costa Rica excluyen la navegación en el río con buques de guerra, pero expresamente la autoriza con buques de servicio fiscal o como se necesite para la protección del goce de la navegación comercial:

> "Segundo.- La República de Costa Rica no tiene según dicho Tratado, y conforme a las estipulaciones de su artículo sexto, el derecho de navegar el río San Juan con buques de guerra, pero puede hacerlo con embarcaciones del servicio fiscal, según corresponda y tenga que ver con el goce de los objetos de comercio, que se le reconoce por dicho artículo o como se necesite para la protección de dicho goce"

Dado lo anterior, no se comprende cómo podría ejercer la vigilancia fiscal o la protección a la navegación comercial en el río San Juan a la que expresamente se refiere el Laudo Cieveland, si la Guardia Civil costarricense no puede navegar en el río con sus armas de reglamento, en naves que no son buques de guerra.

Nótese que aún cuando no existiese el Comunicado Lizano-Cuadra, este fallo internacional reconoce el derecho costarricense a navegar con buques de servicio fiscal o para la protección de la navegación comercial.

Por otra parte, la sentencia de la Corte de Justicia Centroamericana de 30 de setiembre de 1916, expresamente ratifica que Costa Rica tiene un derecho real de uso, perpetuo e inalterable, para la navegación en el bajo San Juan, con fines comerciales, fiscales y defensivos. Al respecto, dice dicho fallo en lo conducente:

> "(…) Costa Rica tiene en el San Juan, para objetos de comercio, los derechos permanentes de libre navegación, desde su desembocadura hasta tres millas antes de llegar al Castillo Viejo; y podrá atracar sus barcos, en cualquier orilla indistintamente, sin que sea lícito imponerle gravámenes en aquella parte en que la navegación es común. Claro está, pues, que el dominio que la República de Nicaragua ejerce en el río San Juan, no es absoluto ni ilimitado; tiene que estar restringido por los derechos de libre navegación y anexos, tan remarcablemente otorgados a Costa Rica, sobre todo si se considera que tales derechos, ejercidos para fines fiscales y defensivos, se confunden en su desarrollo, según el sentir de los tratadistas, con las facultades soberanas del impérium. Tal concesión equivale a un derecho real de uso, perpetuo e inalterable, que coloca a la República de Costa Rica en el goce pleno del dominio útil de gran parte del río San Juan, sin perjuicio del dominio pleno que conserva Nicaragua como Soberana del territorio. …resulta evidente….b)

> El concepto de que los derechos de navegación otorgados a Costa Rica en el río San Juan no se extienden a buques de guerra, sino simplemente a embarcaciones para fines fiscales y defensivos; interpretación que en nada desvirtúa la doctrina expuesta sobre el dominio útil que a Costa Rica corresponde en gran parte del río San Juan, porque la navegación con buques de guerra además de poder constituir una causa de intranquilidad, implicaría una función propia del soberano territorial, (...)"

Por todo lo anterior, señor Ministro, mi Gobierno, a la vez que reafirma su respeto por la soberanía de Nicaragua en el río San Juan, reitera el derecho de Costa Rica de navegar en él en la parte que estipula el tratado Cañas-Jerez con buques que no sean de guerra.

Costa Rica está animada del mejor propósito de mantener con Nicaragua relaciones fraternas, como lo ha demostrado la mesura observada por los funcionarios del Gobierno costarricense, empezando por el propio Presidente de la República Don Miguel Angel Rodríguez, en cuanto a no agravar tensiones ni exacerbar los ánimos con declaraciones virulentas. Sin embargo, esto no significa que el Gobierno de Costa Rica esté dispuesto a renunciar o a permitir que se restrinjan los derechos que le reconoce el tratado, el laudo y la sentencia antes mencionados.

En cuanto a la disposición de su Ilustrado Gobierno de trabajar con base en los instrumentos jurídicos internacionales que determinan los derechos de Nicaragua y Costa Rica en el río San Juan, expresada en su nota, me permito reiterarle que Costa Rica nunca ha pretendido ejercer ni más ni menos derechos que los que dichos instrumentos le conceden, y en tal sentido, reitera su disposición de mantener abiertos los canales de negociación que siempre deben existir entre pueblos hermanos, si en Nicaragua existe idéntica voluntad y el ánimo de nombrar para negociar a personas competentemente autorizadas.

El Ministro de Relaciones Exteriores y Culto

Por lo expuesto, ruego a Su Excelencia indicarme los pasos a seguir a efecto de que la buena voluntad expresada en su nota pueda traducirse en la solución adecuada a este diferendo.

Aprovecho la oportunidad para expresarle el testimonio de mi consideración,

Roberto Rojas

Excelentísimo señor
Carlos Gurdián Debayle
Ministro de Relaciones Exteriores
por la Ley
Managua, Nicaragua

Annex 51

NICARAGUAN ACTING FOREIGN MINISTER,
CARLOS ROBERTO GURDIÁN,
TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ,
NOTE NO. MRE/98/02638, 28 AUGUST 1998

TRANSLATION

(Seal)
Republic of Nicaragua
Central America

Ministry of Foreign Affairs
Managua, Nicaragua

Managua, 28 August 1998
MRE/98/02638

Dear Minister:

I am writing in reference to your letter DM-097-98 of 12 August 1998 and would like to express the following in this respect:

The Nicaraguan Government coincides with Your Excellency in that the Jerez-Cañas Treaty signed on 15 April 1858 and the Award in this regard delivered by the then President of the United States of America, Grover Cleveland, in 1888, constitute the legal instruments that establish the legal status of the San Juan River. Any alteration of the terms used in the said instruments should result in a treaty between Nicaragua and Costa Rica, to be signed in accordance with the regulations established by international law and the constitutional regulations currently in effect in both States.

The Republic of Nicaragua respects and will continue to respect the rights, set down in the Jerez-Cañas Treaty and the Cleveland Award, granted by the Republic of Nicaragua to the Republic of Costa Rica. These rights were expressly granted by Nicaragua to Costa Rica, in its capacity as the State that has possessed and possesses the full sovereignty; being these rights limited in accordance to the terms strictly stated in the Treaty and Award, respectively. In this regard, I quote: "The Republic of Nicaragua shall have **exclusively the dominion and sovereign jurisdiction over the waters of the San Juan River**" (Art. 6 Jerez-Cañas Treaty). Consequently, the rights exercised by Costa Rica can be no other than those expressly stated in the aforementioned legal instruments.

To this effect, please allow me to cite the words of the great Costa Rican statesman and jurist Ricardo Jiménez Oreamuno who, in a study published in 1888, expressed:

> "The emphasis that article 6 of the Treaty places on Nicaragua's possession of full dominion and sovereign jurisdiction over the river's waters underscores the desire to establish a difference between the rights it was advisable Nicaragua and Costa Rica should have over those waters."

Indeed, if the rights of Nicaragua and Costa Rica were the same then, as Mr. Ricardo Jimenez rightly points out: "…what is the practical effect of the solemn declaration stating that the dominion and sovereign jurisdiction is held by Nicaragua?"… "The exception stipulated that Costa Rica would have perpetual rights of free navigation ***con objetos de comercio***. If the exception regarding vessels of war does not appear in the article, then the inference is logical; it was understood that Costa Rica does not have a right in this respect."

In regard to the words of Costa Rica's ex-President, a very logical conclusion emerges: by means of the Jerez-Cañas Treaty, Nicaragua granted Costa Rica a right of free navigation *con objetos de comercio*, and not an unrestricted right. Any form of navigation undertaken by Costa Rica in the waters of the San Juan River that does not correspond to navigation *con objetos de comercio* or that is not carried out with vessels belonging to revenue services related to the enjoyment of the *objetos de comercio* in the part of the river stipulated in the international instruments currently in force, should be expressly authorized by Nicaragua as the country that possesses full sovereignty over the waters of the said river, thus allowing the establishment of all types of regulations which by virtue of said sovereignty she requires to establish. Nicaragua has exercised, does at present exercise and will continue to exercise all the attributes of its sovereignty, without adversely affecting Costa Rica's right to free navigation as set down in the Jerez-Cañas Treaty and the Cleveland Award.

In relation to Your Excellency's reference to articles 4 and 9 of the Jerez-Cañas Treaty, allow me, with all due respect, to point out that these situations are not currently pertinent.

Fortunately, no external acts of aggression exist, nor are we facing or are likely to face a war or any act of hostility. In any case it would be the Republic of Nicaragua's responsibility to qualify any act carried out in its territory by a foreign nation. I would, at the same time, like to reaffirm that Costa Rica's obligation, as expressly stated in the Treaty, to attend to the custody of the river is from its territory (respective bank).

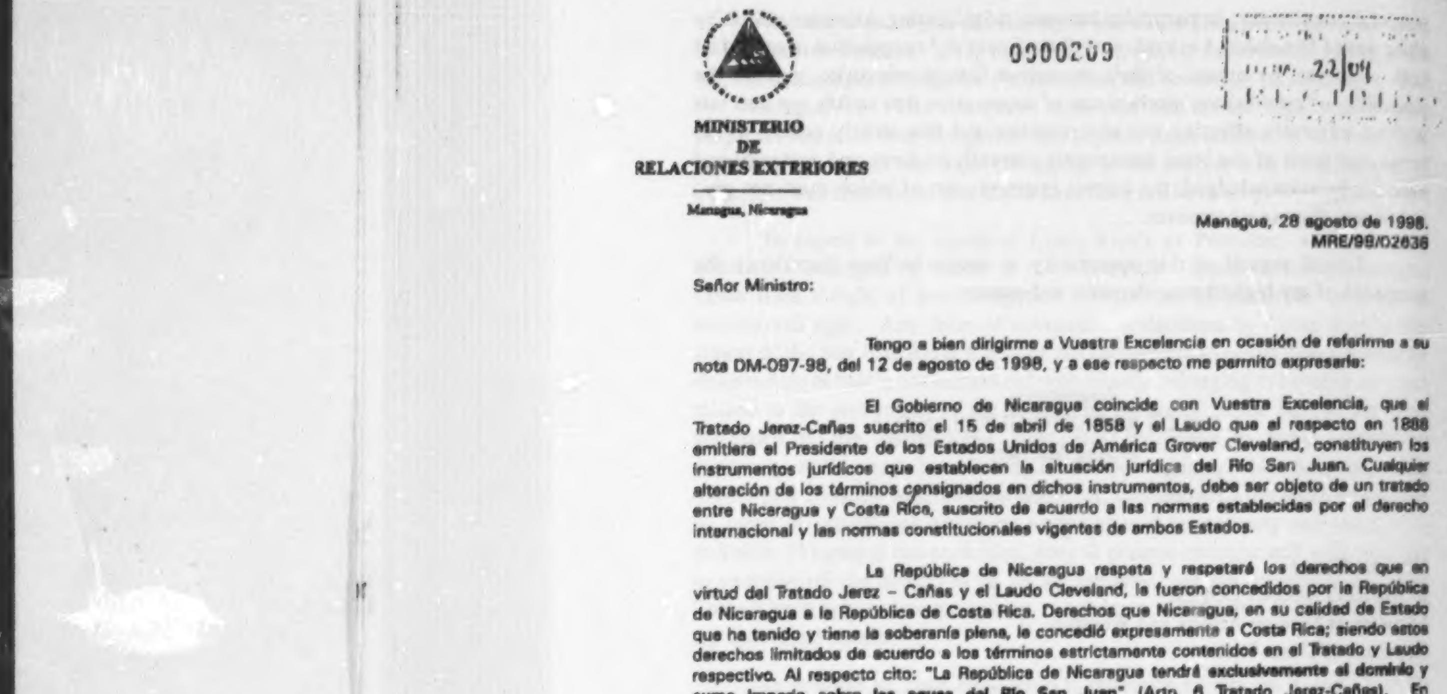
Regarding the defence of the San Juan River, allow me to quote, once again, Mr. Ricardo Jiménez: "It is Costa Rica's obligation, as stated in article 4, to defend the San Juan River as Nicaragua's ally; and since when has an ally, by its very nature, assumed the right, in the absence of war, to travel through the allied territory with its troops, to navigate with vessels of war along domestic waters or station its navy at its ports?"

Finally, Minister, I would like to reaffirm that, within the spirit of solidarity and fraternity that should prevail between the nations of Central America guided by the judicious principles of good neighbourliness and peaceful coexistence, in particular between neighbouring countries united by close ties of friendship, I extend our full readiness and cooperation in order that both countries, by means of their respective foreign ministries, explore the possibility of establishing mechanisms of cooperation that satisfy our interests without adversely affecting our sovereignties and that strictly adhere to the terms and spirit of the legal instruments currently in force and mutually and historically acknowledged, the correct interpretation of which must not give rise to any dispute whatsoever.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration and esteem.

(signature)
CARLOS ROBERTO GURDIAN D.
Acting Minister

His Excellency
ROBERTO ROJAS LOPEZ
Minister of Foreign Affairs and Worship
Republic of Costa Rica



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MINISTERIO
DE
RELACIONES EXTERIORES

Managua, Nicaragua

Managua, 28 agosto de 1998.
MRE/98/02636

Señor Ministro:

Tengo a bien dirigirme a Vuestra Excelencia en ocasión de referirme a su nota DM-097-98, del 12 de agosto de 1998, y a ese respecto me permito expresarle:

El Gobierno de Nicaragua coincide con Vuestra Excelencia, que el Tratado Jerez-Cañas suscrito el 15 de abril de 1858 y el Laudo que al respecto en 1888 emitiera el Presidente de los Estados Unidos de América Grover Cleveland, constituyen los instrumentos jurídicos que establecen la situación jurídica del Río San Juan. Cualquier alteración de los términos consignados en dichos instrumentos, debe ser objeto de un tratado entre Nicaragua y Costa Rica, suscrito de acuerdo a las normas establecidas por el derecho internacional y las normas constitucionales vigentes de ambos Estados.

La República de Nicaragua respeta y respetará los derechos que en virtud del Tratado Jerez – Cañas y el Laudo Cleveland, le fueron concedidos por la República de Nicaragua a la República de Costa Rica. Derechos que Nicaragua, en su calidad de Estado que ha tenido y tiene la soberanía plena, le concedió expresamente a Costa Rica; siendo estos derechos limitados de acuerdo a los términos estrictamente contenidos en el Tratado y Laudo respectivo. Al respecto cito: "La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del Río San Juan" (Arto. 6 Tratado Jerez-Cañas). En consecuencia, los derechos que Costa Rica detenta no pueden ser otros que los expresamente consignados en los instrumentos jurídicos supra mencionados.

En ese sentido, me permito citar las palabras del gran estadista y jurista costarricense Ricardo Jiménez Oreamuno, quien en un estudio publicado en 1888 expresara:

> "El énfasis con que el artículo 6 del Tratado consigna que Nicaragua tendrá el dominio y sumo imperio sobre las aguas del río, manifiesta que se quiso establecer diferencia entre los derechos que Nicaragua y Costa Rica se convenía tuvieran en aquellas aguas".

En efecto...

Al Excelentísimo Señor
DON ROBERTO ROJAS LOPEZ
Ministro de Relaciones Exteriores y Culto
República de Costa Rica

En efecto, y si los derechos de Nicaragua y Costa Rica fuesen los mismos, entonces como bien lo expresa don Ricardo Jiménez: "...qué efecto práctico tiene la solemne declaración de que el dominio y sumo imperio corresponde a Nicaraguá?"... "La salvedad se estipuló, que Costa Rica tendría derechos perpetuos de libre navegación con objetos de comercio. Si no aparece en el artículo la salvedad de naves de guerra, la inferencia es lógica; no se creyó que Costa Rica tuviera derecho a ello".

De lo expresado por el Señor Ex Presidente de la República de Costa Rica, se desprende algo muy lógico: Nicaragua concedió a Costa Rica en virtud del tratado Jerez-Cañas un derecho de libre navegación con objetos de comercio, no un derecho irrestricto. Cualquier navegación que Costa Rica efectúe en las aguas del río San Juan que no corresponda a la navegación con objetos de comercio o con embarcaciones de servicio fiscal vinculadas al goce de los objetos de comercio, en la parte del río establecida en los instrumentos internacionales vigentes, debe ser autorizada expresamente por Nicaragua, como país en el cual recae la soberanía plena, sobre las aguas de dicho río, pudiendo entonces establecer todo tipo de regulaciones que en virtud de dicha soberanía requiera establecer. Nicaragua ha ejercido, ejerce y seguirá ejerciendo todos los atributos de su soberanía, sin menoscabo alguno al derecho de Costa Rica de libre navegación, estipulado en el Tratado Jerez – Cañas y Laudo Cleveland.

En cuanto a la mención que Vuestra Excelencia hace de los artículos 4 y 9 del tratado Jerez-Cañas, respetuosamente me permito expresarle que se refieren a situaciones que en la actualidad no vienen al caso.

Afortunadamente, no existe ninguna agresión exterior ni tampoco nos enfrenta, ni seguramente nos enfrentará, ninguna guerra, ni acto de hostilidad. En todo caso a la República de Nicaragua le correspondería calificar cualquier acto que un Estado extranjero ejerza en su territorio. Al mismo tiempo, me permito reiterar lo expresamente consignado en el Tratado de que la obligación que pesa sobre Costa Rica de concurrir a la guarda del río, es desde su territorio (margen respectiva).

Respecto a la defensa del río San Juan, me permito volver a citar textualmente, a don Ricardo Jiménez: "Costa Rica por el artículo 4 quedó obligada a defender el San Juan como aliada de Nicaragua; y ¿cuándo se ha visto que un aliado, por serlo, pretenda tener derecho, no habiendo guerra, para transitar con sus tropas por el territorio aliado, para navegar con buques de guerra sus aguas interiores o estacionar armadas en sus puertos?".

Para concluir...

Para concluir, deseo reiterar a Vuestra Excelencia que dentro del espíritu de solidaridad y hermandad que deben de prevalecer entre los países de Centroamérica y guiados por los sabios principios de buena vecindad y convivencia pacífica, particularmente entre países vecinos unidos por estrechos lazos de amistad, me permito ofrecer toda nuestra voluntad y cooperación para que ambos países, a través de las respectivas Cancillerías, exploremos la posibilidad de establecer mecanismos de cooperación que satisfagan nuestros intereses, sin lesionar nuestras soberanías y en estricto apego a la letra y el espíritu de los instrumentos jurídicos vigentes, comúnmente e históricamente reconocidos, cuya correcta interpretación no pueden dar lugar a diferendo alguno.

Aprovecho la oportunidad para reiterar a Vuestra Excelencia, las muestras de mi más alta consideración y estima.

CARLOS ROBERTO GORDIAN D.
Ministro por la Ley

Annex 52

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, TO NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, 7 SEPTEMBER 1998

TRANSLATION

The Minister of Foreign Affairs

Mr. Eduardo Montealegre
Minister of Foreign Affairs
Republic of Nicaragua

Dear Mr. Montealegre:

I would like to take this opportunity to greet your Excellency and, at the same time, inform you of the problems being encountered by the Programme Technicians of the Eradication of Screworms from Cattle Programme. This programme, which operates at a national level, is being carried out by officials who make regular visits to the cattle farmers.

Over the past few days a serious problem has arisen due to the fact that the Nicaraguan authorities in the Atlantic Huetar Region are blocking the right of passage that is established in the Cañas-Jeréz Treaty and the Cleveland Award.

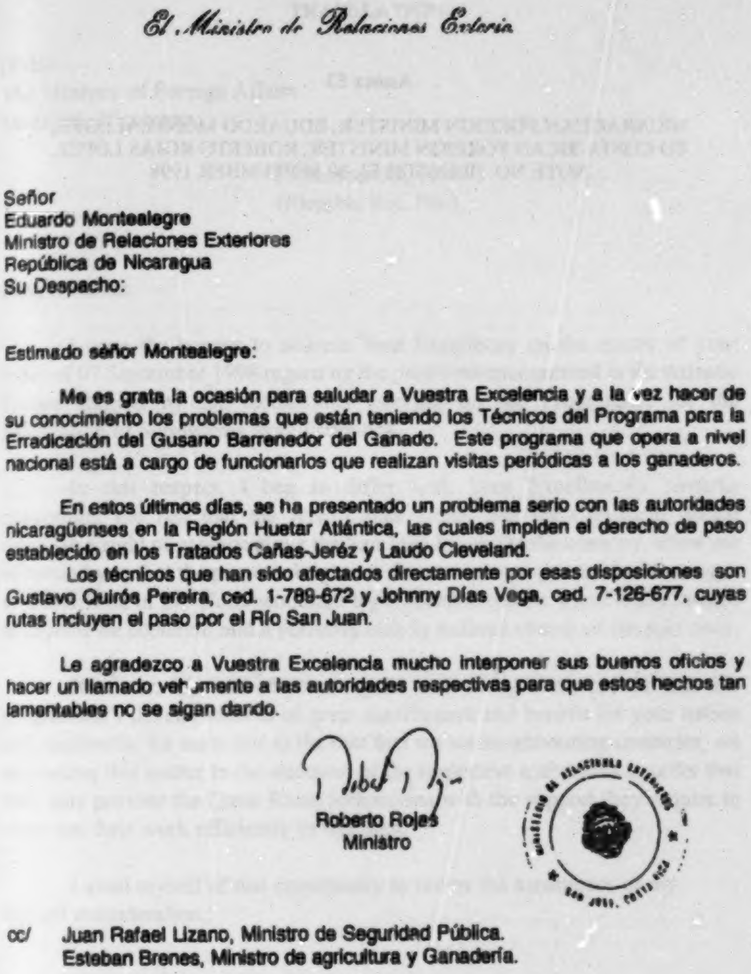
The technicians who have been directly affected by these orders are Gustavo Quirós Pereira, ID No. 1-789-672 and Johnny Días Vega, ID No. 7-126-677, whose itineraries include passage along the San Juan River.

I would be most grateful if your Excellency could intercede and forcefully call the respective authorities' attention to this matter in order to put an end to these regrettable incidents.

(Signature)
Roberto Rojas
Minister

(Seal)
Ministry of Foreign Affairs
San Jose, Costa Rica

cc/ Juan Rafael Lizano, Minister of Public Security
Esteban Brenes, Minister of Agriculture and Stockbreeding



El Ministro de Relaciones Exterior

Señor
Eduardo Montealegre
Ministro de Relaciones Exteriores
República de Nicaragua
Su Despacho:

Estimado señor Montealegre:

Me es grata la ocasión para saludar a Vuestra Excelencia y a la vez hacer de su conocimiento los problemas que están teniendo los Técnicos del Programa para la Erradicación del Gusano Barrenedor del Ganado. Este programa que opera a nivel nacional está a cargo de funcionarios que realizan visitas periódicas a los ganaderos.

En estos últimos días, se ha presentado un problema serio con las autoridades nicaragüenses en la Región Huetar Atlántica, las cuales impiden el derecho de paso establecido en los Tratados Cañas-Jeréz y Laudo Cleveland.

Los técnicos que han sido afectados directamente por esas disposiciones son Gustavo Quirós Pereira, ced. 1-789-672 y Johnny Días Vega, ced. 7-126-677, cuyas rutas incluyen el paso por el Río San Juan.

Le agradezco a Vuestra Excelencia mucho interponer sus buenos oficios y hacer un llamado vehemente a las autoridades respectivas para que estos hechos tan lamentables no se sigan dando.

Roberto Rojas
Ministro

cc/ Juan Rafael Lizano, Ministro de Seguridad Pública.
Esteban Brenes, Ministro de agricultura y Ganadería.

Annex 53

NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, NOTE NO. [ILLEGIBLE], 30 SEPTEMBER 1998

TRANSLATION

(Seal)
The Ministry of Foreign Affairs
Managua, Nicaragua

September 30, 1998
(Illegible Ref. No.)

Dear Minister:

I have the honour to address Your Excellency on the matter of your letter of 07 September 1998 regarding the problems encountered in the Atlantic Huetar Region by the technicians working on the Programme for the Eradication of Screworms from Livestock.

In this respect, I beg to differ with Your Excellency's remarks concerning the fact that the Jeréz-Cañas Treaty and the Cleveland Award establish a right of passage along the San Juan River. On the contrary, allow me to remind you that the perpetual rights of free navigation granted by Nicaragua to Costa Rica in the aforementioned legal instruments are specifically limited to *objetos de comercio* and a perfectly clearly defined stretch of the said river.

However, in view of your request and taking into account that this programme's development is of great significance and benefit for your nation and, indirectly, for ours, due to the fact that we are neighbouring countries, we are calling this matter to the attention of the respective authorities in order that they may provide the Costa Rican technicians with the support they require to carry out their work efficiently in this area.

I avail myself of this opportunity to renew the assurances of my highest consideration,

(signature)
Eduardo Montealegre R.
Minister

His Excellency
Mr. ROBERTO ROJAS
Minister of Foreign Affairs
Republic of Costa Rica
San Jose, Costa Rica

solo nuestro

**MINISTERIO
DE
RELACIONES EXTERIORES**
Managua, Nicaragua

30 de septiembre de 1998
[illegible]

Señor Ministro:

Tengo sumo agrado en dirigirme a Vuestra Excelencia en ocasión de hacer referencia a su comunicación fechada el 07 de septiembre de 1998, sobre problemas que están teniendo los técnicos del Programa para la Erradicación del Gusano Barrenador del Ganado, en la Región Huetar Atlántica.

A este respecto, me permito disentir con lo expresado por Vuestra Excelencia, de que el Tratado Jeréz-Cañas y el Laudo Cleveland establecen un derecho de paso por el río San Juan, y por el contrario me permito recordar, que los derechos perpetuos de libre navegación concedidos por Nicaragua a Costa Rica en virtud de dichos instrumentos jurídicos están específicamente condicionados a objetos de comercio y en un trecho perfectamente definido de dicho río.

Sin embargo, en atención a su solicitud y tomando en consideración que el desarrollo de este programa es de gran importancia y beneficio para su país e indirectamente para el nuestro, por ser países vecinos, estamos haciendo un llamado a las autoridades correspondientes para que brinden a los técnicos costarricenses el apoyo necesario que les permita realizar de forma eficiente su trabajo en dicha zona.

Hago propicia la ocasión para expresarle las muestras de mi consideración.

Emontealegre

Eduardo Montealegre R.
Ministro

Al Excelentísimo Señor
Don ROBERTO ROJAS
Ministro de Relaciones Exteriores y Culto
República de Costa Rica
San José, Costa Rica

Annex 54

COSTA RICAN DEPUTY FOREIGN MINISTER, WALTER NIEHAUS, TO NICARAGUAN DEPUTY FOREIGN MINISTER, GUILLERMO ARGÜELLO POESSY, NOTE NO. DVM : 607-99, 11 MAY 1999

TRANSLATION

San Jose, 11 May 1999
DVM: 607-99

His Excellency
Dr. Guillermo Arguello Poessy
DEPUTY MINISTER OF FOREIGN AFFAIRS
Republic of Nicaragua

Dear Deputy Minister:

According to our conversation at the IV Regional Conference on Migration held from 26 to 29 January in San Salvador and which we were unable to follow up on until last Thursday 6 May during the meetings of the IX Mixed European Union – Central America Commission, due to the accident I had in February, please find enclosed the document that Costa Rica agrees to sign and that would normalize navigation on the San Juan River and promote development within the atmosphere of cooperation and friendship that prevails over our neighbouring nations.

Yours faithfully,

(signature)
Walter Niehaus B

San José, 11 de mayo, 1999
DVM: 607-99

Excelentísimo
Dr. Guillermo Arguello Poessy
VICECANCILLER
República de Nicaragua

Estimado Señor Vicecanciller:

De acuerdo a nuestra conversación sostenida durante la IV Conferencia Regional sobre Migración que se efectuó entre el pasado 26 y 29 de enero en San Salvador, y a la cual le pudimos dar continuidad hasta el pasado jueves 6 de mayo durante las reuniones de la IX Comisión Mixta Unión Europea - Centroamérica, debido al accidente que yo sufriera en febrero, me permito remitirle el documento que Costa Rica estaría de acuerdo en firmar y que viene a normalizar la navegación sobre el Río San Juan e impulsar su desarrollo, dentro del ámbito de cooperación y amistad que reina entre nuestros pueblos hermanos.

Con toda consideración

Walter Niehaus B

Annex 55

NICARAGUAN DEPUTY FOREIGN MINISTER,
GUILLERMO ARGÜELLO POESSY,
TO COSTA RICAN DEPUTY FOREIGN MINISTER, WALTER NIEHAUS,
NOTE NO. MRE/99/01347, 12 MAY 1999

TRANSLATION

The Deputy Minister of Foreign Affairs

MRE/99/01347
Managua, 12 May 1999

Dear Deputy Minister:

I am writing to acknowledge receipt of your letter DVM: 607-99 of 11 May in which you refer to our conversation held during the IV Regional Conference on Migration.

In the aforementioned letter you enclose a proposal that Costa Rica would be willing to sign. The Ministry of Foreign Affairs is studying the said document in order to formulate the appropriate response.

I avail myself of this opportunity to renew the assurances of my highest consideration.

(signature)
Guillermo Argüello Poessy

His Excellency
Walter Niehaus
Deputy Minister of Foreign Affairs and Worship
of the Republic of Costa Rica
His office

(seal)
Ministry of Foreign Affairs
Managua, Nicaragua
Central America

(stamp)
Ministry of Foreign Affairs
Deputy Minister's Office
RECEIVED
Date: 13/5/99

El Viceministro de Relaciones Exteriores

MRE/99/01347
Managua, 12 de mayo de 1999

Estimado Señor Viceministro.

Tengo el agrado de dirigirme a usted, en ocasión de acusar recibo de su nota DVM:607-99, del 11 de mayo, en la cual hace referencia a nuestra conversación sostenida durante la IV conferencia Regional sobre Migración.

En dicha nota se nos hace remisión de una propuesta de documento que Costa Rica estaría dispuesta a firmar. La Cancillería está estudiando el citado documento para su oportuna respuesta.

Hago propicia la ocasión para expresar las muestras de mi consideración y estima.

Guillermo Argüello P

MINISTERIO DE RELACIONES EXTERIORES
DESPACHO DEL VICEMINISTRO
RECIBIDO
FECHA 13/5/99
0000648

Excelentísimo Señor
Walter Niehaus
Viceministro de Relaciones Exteriores y Culto
de la República de Costa Rica
Su despacho

Annex 56

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, TO NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, NOTE NO. DM-015-2000, 21 JANUARY 2000

TRANSLATION

The Minister of Foreign Affairs and Worship

21 January 2000
DM-015-2000

Your Excellency:

I have the honour to address Your Excellency, once again on the possibility of continuing talks regarding the maritime delimitation between Costa Rica and Nicaragua.

In this respect, as I pointed out in my letter Ref: DM 535-99 of 20 December 1999, the Government of Costa Rica reaffirms its ample willingness to continue talks with Nicaragua on this matter of interest to both our countries, once the talks being carried out on the scope of Costa Rica's rights of free navigation on the San Juan River have reached a satisfactory conclusion.

On this understanding, and in view of my public engagements already planned for February, I would like to propose to Your Excellency the possibility of holding meetings regarding this matter during the first week of March to begin discussions on the maritime border delimitation in the Pacific Ocean. The meetings could take place in San José in accordance with the proposal of Your Excellency, and the specific dates during that first week of March could be agreed upon via diplomatic channels.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(signature)
Roberto Rojas

His Excellency
Eduardo Montealegre
Minister of Foreign Affairs
Republic of Nicaragua

El Ministro de Relaciones Exteriores y Culto

21 de enero de 2000
DM-015-2000

Excelentísimo señor:

Me es grato saludar a Vuestra Excelencia en ocasión de referirme nuevamente a la posibilidad de continuar conversaciones sobre la delimitación marítima entre Costa Rica y Nicaragua.

Al respecto, de conformidad con lo planteado en mi nota DM 535-99 de 20 de diciembre de 1999, el Gobierno de Costa Rica reitera su plena disposición de continuar el diálogo con Nicaragua sobre este tema de interés común, una vez concluido satisfactoriamente el diálogo que se desarrolla sobre el tema de los alcances del derecho de libre navegación de Costa Rica en el río San Juan.

En este entendido, y en atención a compromisos de mis funciones ya adquiridos para el mes de febrero próximo, me permito plantear a Vuestra Excelencia la posibilidad de efectuar las reuniones sobre el particular en la primera semana de marzo, e iniciar en ellas las conversaciones sobre la delimitación fronteriza marítima en el Océano Pacífico. Las reuniones podrían efectuarse en San José, de conformidad con la propuesta de Vuestra Excelencia, y sus fechas precisas, dentro de esa primera semana de marzo, podrían determinarse, de común acuerdo, por la vía diplomática.

Aprovecho la oportunidad para reiterarle el testimonio de mi distinguida consideración.

24/01/00

Roberto Rojas

EXCELENTISMO SEÑOR
EDUARDO MONTEALEGRE
MINISTRO DE RELACIONES EXTERIORES DE NICARAGUA
MANAGUA

Annex 57

NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, NOTE NO. MRE/DM/3882/01/00, 28 JANUARY 2000

TRANSLATION

The Minister of Foreign Affairs

28 January 2000
MRE/DM/3882/01/00

Dear Minister:

I have the honour to address Your Excellency to acknowledge receipt of your letter Ref: DM/015/2000 of 21 January of the current year regarding the continuation of talks on the maritime delimitation between Nicaragua and Costa Rica on both Oceans.

In this respect and, bearing in mind that it is impossible for Your Excellency to attend a meeting in February due to your previously scheduled engagements, allow me to suggest that, in order to discuss the maritime demarcation between Nicaragua and Costa Rica on both oceans, and to continue talks regarding navigation on the San Juan River, the meeting be held on 3rd March of the current year in the city of San Jose, Costa Rica.

The Nicaraguan delegation will be presided over by Dr. Guillermo Argüello Poessy, Deputy Minister of Foreign Affairs of the Republic of Nicaragua.

I avail myself of this opportunity to renew, Your Excellency, the assurance of my highest consideration.

(signature)
Eduardo Montealegre R.

His Excellency
Roberto Rojas López
Minister of Foreign Affairs and Worship
Republic of Costa Rica

El Ministro de Relaciones Exteriores

28 de enero del 2000
MRE/DM/[illegible]/01/00

Señor Ministro:

Tengo el agrado de dirigirme a Vuestra Excelencia en ocasión de referirme a su Nota DM-015-2000 del día 21 de enero del año en curso, relativa a la continuación de las conversaciones sobre la delimitación marítima entre Nicaragua y Costa Rica en ambos Océanos.

Al respecto, y tomando nota de la imposibilidad de Vuestra Excelencia de tener un encuentro en el mes de febrero, en virtud de los compromisos ya adquiridos, me permito someter a su consideración que, en aras de abordar la delimitación marítima entre Nicaragua y Costa Rica, en ambos océanos, y de continuar conversaciones respecto a la navegación en el río San Juan, el referido encuentro se realice el 3 de marzo del año en curso, en la ciudad de San José, Costa Rica.

Informo a Vuestra Excelencia que la Delegación de Nicaragua estará presidida por el Dr. Guillermo Argüello Poessy, Viceministro de Relaciones Exteriores de la República de Nicaragua.

Aprovecho la ocasión para reiterar a Vuestra Excelencia las muestras de mi más alta y distinguida consideración.

EMontealegre

Eduardo Montealegre R.

Excelentísimo Señor
Roberto Rojas López
Ministro de Relaciones Exteriores y Culto
República de Costa Rica

Annex 58

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, TO NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, NOTE NO. DM-079-2000, 15 FEBRUARY 2000

TRANSLATION

The Ministry of Foreign Affairs and Worship
Minister's Office

15 February 2000
DM-079-2000

Dear Minister:

I have the honour to address Your Excellency in order to acknowledge receipt of your letter MRE/DM/3882/01/00 of 7 January 2000 regarding the continuation of talks on maritime delimitation between the Republics of Nicaragua and Costa Rica as well as on the navigation on the San Juan River.

In this respect, we are pleased that a meeting is to be held tomorrow in the city of Managua, Nicaragua, between the Costa Rican Deputy Minister of Foreign Affairs, Dr. Walter Niehaus, and the Nicaraguan Deputy Minister of Foreign Affairs, Dr. Jose Adán Guerra, in which talks on the aforementioned matters begun with the former Deputy Minister of Foreign Affairs, Carlos Gurdian, will be continued.

I avail myself of this opportunity to renew, Your Excellency, the assurance of my highest consideration.

(signature)
Roberto Rojas

His Excellency
Eduardo Montealegre
Minister of Foreign Affairs
Republic of Nicaragua

Ministerio de Relaciones Exteriores y Culto
DESPACHO DEL MINISTRO

15 de febrero del 2000
DM-079-2000

Señor Ministro:

Tengo el agrado de dirigirme a Vuestra Excelencia en ocasión de acusar recibo de su nota MRE/DM/3882/01/00 del 7 de enero del 2000, relativa a la continuación de las conversaciones sobre la delimitación marítima entre las Repúblicas de Costa Rica y Nicaragua, y sobre la navegación por el Río San Juan.

En ese sentido, nos es grato que el día de mañana se lleve a cabo un encuentro entre el señor Vice Ministro de Relaciones Exteriores y Culto de la República de Costa Rica, Dr. Walter Niehaus, y el señor Vice Ministro de Relaciones Exteriores de la República de Nicaragua, Dr. José Adán Guerra, en la ciudad de Managua, Nicaragua, donde se continuará con la discusión de los temas apuntados, iniciada con el ex Vice Ministro Carlos Gurdián.

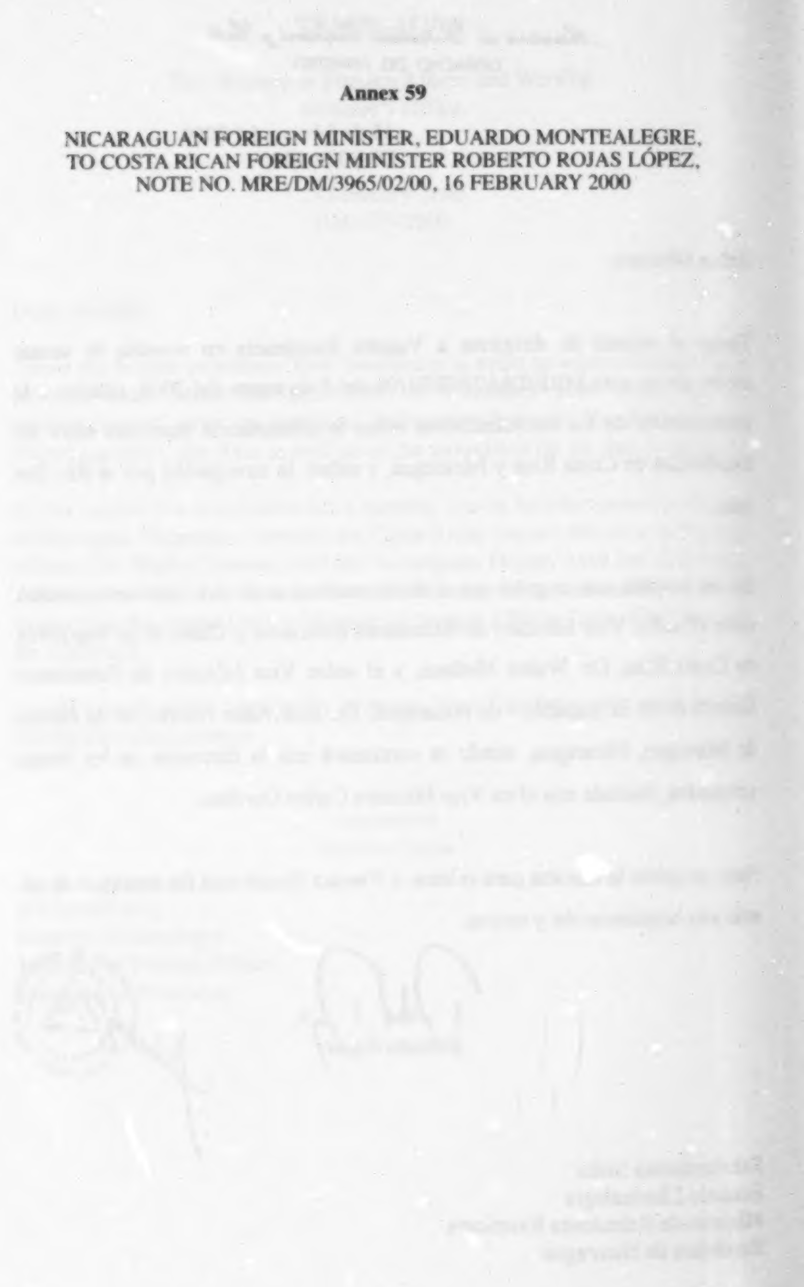
Hago propicia la ocasión para reiterar a Vuestra Excelencia las muestras de mi más alta consideración y estima.

Roberto Rojas

Excelentísimo Señor
Eduardo Montealegre
Ministro de Relaciones Exteriores
República de Nicaragua

Annex 59

NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, TO COSTA RICAN FOREIGN MINISTER ROBERTO ROJAS LÓPEZ, NOTE NO. MRE/DM/3965/02/00, 16 FEBRUARY 2000



TRANSLATION

The Minister of Foreign Affairs

16 February 2000
MRE/DM/3965/02/00

Dear Minister:

I have the honour to address Your Excellency to acknowledge receipt of your kind letter Ref: DM/079/200 in which you make reference to the meeting of the Deputy Ministers of Foreign Affairs of Nicaragua and Costa Rica that will be held today in Managua.

The Government of Nicaragua is, like Your Excellency, pleased that our Deputy Ministers of Foreign Affairs are meeting to follow up on the conversations regarding the maritime delimitation between our two countries and to discuss the possibility that the Nicaraguan authorities provide assistance to the sister Republic of Costa Rica, for the provisioning of its border posts.

I avail myself of the opportunity to express to Your Excellency the assurances of my highest and most distinguished consideration.

(signature)
Eduardo Montealegre R.

His Excellency
Roberto Rojas Lopez
Minister of Foreign Affairs and Worship
Republic of Costa Rica
San Jose

El Ministro de Relaciones Exteriores

16 de febrero de 2000
MRE/DM/3965/02/00

Señor Ministro:

Tengo el agrado de dirigirme a Vuestra Excelencia en ocasión de acusar recibo de su atenta nota DM-079-200, en la que se refiere al encuentro que sostendrán el día de hoy, en Managua, los Señores Viceministros de Relaciones Exteriores de Nicaragua y Costa Rica.

Igual que Vuestra Excelencia, el Gobierno de Nicaragua ve con agrado que nuestros Viceministros se reúnan para dar continuidad a las conversaciones sobre la delimitación marítima entre nuestros países y sobre la posibilidad de que las autoridades nicaragüenses brinden asistencia a la hermana República de Costa Rica para el avituallamiento de sus puestos fronterizos.

Aprovecho la ocasión para reiterar a Vuestra Excelencia las muestras de mi más alta y distinguida consideración.

Emontealegr

Eduardo Montealegre R.

Excelentísimo Señor
Roberto Rojas
Ministro de Relaciones Exteriores y Culto
República de Costa Rica
San José

Annex 60

PERMANENT REPRESENTATIVE OF COSTA RICA TO THE ORGANIZATION OF AMERICAN STATES, AMBASSADOR HERNÁN R. CASTRO, TO THE PRESIDENT OF THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES, JAMES SCHOFIELD MURPHY, 3 MARCH 2000

TRANSLATION

(seal)
Costa Rican Permanent Mission
Before the Organization of American States
Washington, D.C.

Washington, 3 March 2000

Honourable Mr. President:

I have the honour to address you, on the occasion of informing, through your worthy channel, the Honourable Permanent Council of the Organization of the American States of the deep concern of the Government of the Republic of Costa Rica regarding the events and controversy that have been taking place with the Republic of Nicaragua, who has prevented the exercising of the perpetual right of free navigation that the Republic of Costa Rica possesses on the San Juan River, which has constituted a situation that could jeopardize peace and requires the analysis of this matter in the light of regional and international regulations.

The right of the Republic of Costa Rica to free navigation on the San Juan River complies, at all levels, with that stipulated in the Cañas-Jerez Treaty of 1858, the Cleveland Award of 1888, the Central American Court of Justice judgement of 1916, the Friendship Pact between the Governments of the Republic of Costa Rica and Nicaragua of 1956 and all the other related international instruments.

Thus, the Cañas-Jerez Treaty indicates in its articles 4, 6 and 9, in addition to the right of free navigation for purposes of commerce, obligations of a defensive nature on the San Juan River, clearly prohibiting both countries carry out hostile acts there.

> *"Article 4: (...) Costa Rica shall be bound, as far as the portion of the banks of the San Juan river which correspond to it is concerned, to contribute to its custody in the same way as the two Republics shall contribute to the defence of the river in case of external aggression(...)"*
>
> *"Article 6: The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the*

> *Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from CastilloViejo, said navigation being for the purposes of commerce (...)"*
>
> *"Article 9: Under no circumstances, and even in case that the Republics of Costa Rica and Nicaragua should unhappily find themselves in a state of war, neither of them shall be allowed to commit any act of hostility against the other, whether in the port of San Juan del Norte, or in the San Juan river, or the Lake of Nicaragua".*

The Cleveland Award, for its part, elaborates on the provisions of the Cañas-Jerez Treaty referring specifically in point II to the scope and limitations of Costa Rica's free navigation. In this point, navigation on the river with vessels of war is excluded, however, it is expressly authorized with vessels of the revenue service or those required for the protection of the enjoyment of navigation for purposes of commerce.

> *"Second. The Republic of Costa Rica under said Treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the river San Juan with vessels of war; but she may navigate said river with such vessels of the Revenue Service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment."*

Indeed, in the interests of being able to exercise the revenue surveillance to which the aforementioned article refers, in order to protect navigation for purposes of commerce it should be understood that the Costa Rican authorities require their protection equipment, including their service arms, to be able to fulfil this function.

The Central American Court of Justice judgement, of 30 September 1916, equally ratifies the real right of use, perpetual and inalterable, that Costa Rica possesses to navigate the San Juan River with commercial, fiscal and defensive purposes. In this regard it establishes:

> *"(...) Costa Rica possesses in the San Juan River, for purposes of commerce, permanent rights of free navigation from its outlet as far up as three miles below Castillo Viejo, and the right for her vessels to moor at all points along either bank, exempt from the imposition of any charges, in that part of the stream in which navigation is common. It is clear,*

> *therefore, that the ownership which the Republic of Nicaragua exercises in the San Juan River is neither absolute or unlimited; it is necessarily restricted by the rights of free navigation, and their attendant rights, so clearly adjudicated to Costa Rica- the more so if it is considered that such rights, exercised for revenue and defensive purposes are, according to the opinion of statesmen, usually confounded in their development with the sovereign powers of the imperium, such a concession is equivalent to a real right of use, perpetual and unalterable, that establishes the Republic of Costa Rica in the full enjoyment of practical ownership of a large part of the San Juan River without prejudice to the full ownership reserved to Nicaragua as sovereign over the territory...are evident...b) the proposition that the rights of navigation on the San Juan River that were confirmed in Costa Rica do not extend to vessels of war, but simply to vessels devoted to revenue and defensive purposes- an interpretation that in no way detracts from the doctrine set forth concerning the practical ownership pertaining in great part to Costa Rica over the San Juan River because navigation with vessels of war, aside from constituting a cause for disquiet, would imply a function appropriate to territorial sovereignty.(...)"*

Finally, the 1956 Amity Pact between both states, stipulate that:

> *"I- The two Parties, acting in the spirit which should move the members of the Central American family of nations, shall collaborate to the best of their ability in order to carry out those undertakings and activities which require a common effort by both States and are of mutual benefit and, in particular, in order to facilitate and expedite traffic on the Pan American Highway and on the San Juan River within the terms of he Treaty of 15 April 1858 and its interpretation given by arbitration on 22 March 1888, and also in order to facilitate those transport services which may be provided to the territory of one Party by enterprises which are nationals of the other."*

However, and despite the abovementioned regulation, on 15 July 1998 the Republic of Nicaragua unilaterally impeded free navigation, a situation that has continued up to the present time, bilateral talks not having been productive, in open disrespect, on the part of the Nicaraguan Government, of International Law.

As a consequence of the above, on 30 July 1998 a Joint Communiqué was signed by Mr. Jaime Cuadra, the Nicaraguan Minister of Defence, and Mr.

Juan Rafael Lizano, the Costa Rican Minister of Public Security, confirming that the Costa Rican authorities could navigate the San Juan River carrying their service arms.

> *"THIRD: Both Ministers manifest their willingness to resolve the regrettable inconveniences that occurred over the past few days and, for this purpose, they are establishing the following orders for their respective subordinates:*
>
> *1.- The crew of the vessels of the Public Force of Costa Rica that carry out relief of police and the supply of the border posts located on the right bank of the San Juan River will navigate along the aforementioned river after having given the required notice carrying only their service arms, and the Nicaraguan authorities may accompany the Costa Rican vessels making this journey along the San Juan River in their own separate means of transportation. Should the Nicaraguan vessel not accompany the Costa Rican vessels, the latter may carry out their rounds in keeping with the corresponding border post reports as indicated in this agreement."*

Despite the signing of the said agreement, which is in full force under international law, the Nicaraguan National Assembly denied the authority of Minister Cuadra's signature by declaring the said agreement "null and void and inexistent".

> *"In this regard, having revised and analyzed the aforementioned document exhaustively, the Government of the Republic of Nicaragua has concluded that, in accordance with our Political Constitution, the said document (Joint Communiqué of 30 July 1998) fundamentally lacks the power of a legally binding document and, therefore, does not admit regulations, forcing the Government of Nicaragua to declare it legally null and void and non-existent" (Diplomatic Note No. VM/08/0685/98, of 11 August 1998, from the Deputy Minister of Nicaragua, Carlos Gurdian Debayle to the Foreign Minister of Costa Rica, Roberto Rojas)*

Lastly, and as an aggravating factor to the flagrant violation initiated by the Government of the Republic of Nicaragua of our right to free navigation on the San Juan River, with the arbitrary suspension of that navigation, as well as the unilateral invalidation of the Lizano-Cuadra agreement, it demonstrated contempt for the principles of law, as well as an infringement of the international legal framework and normative, on threatening the Republic of

Costa Rica, a country without an army, with the use of force if it navigated the river.

These declarations, made on 3 August 1998, during a visit to the towns on the San Juan River likewise contradict the spirit of the bilateral Agreements mentioned. On that occasion, President Aleman stated:

> *"(...) if we need to make use of the institution of the armed forces of Nicaragua, we shall make use of them (...) The sovereignty of a nation is not something that is discussed, it is defended with arms in hand (...)" (El Nuevo Diario, Managua, Nicaragua. Aleman: "I could take up arms". Thursday 30 July 1998, page 12).*
>
> *"We are a peaceful nation; we are civic-minded, but we are brave enough to defend, as General Sandino said, the sovereignty of a country gun in hand (...) and if it is necessary to sacrifice our lives, we will sacrifice them also". (La Nacion. San Jose, Costa Rica. Nicaraguan hostility worsens, Tuesday 4 August 1998, El Pais section, page 6A)".*

In contrast to this position taken by President Aleman and, in keeping with international Law, the President of Costa Rica, Dr. Miguel Angel Rodriguez, demonstrated an important difference in the way he approached this matter, pointing out in his speech simultaneously broadcast on national television and radio on 13 August 1998:

> *"Fellow citizens, let it be quite clear that we will firmly defend our rights using the only path that we, Costa Ricans, know: the dialogue and the legal instruments. (...) Our aim is that justice be restored in this case, through the appropriate means. Our way, as always, is peaceful mean. This is the way of José Maria Castro Madriz, who showed us that the sword is always the enemy of freedom. It is the path of concord that was taken by our great grand fathers to support the co-existence in understanding and not in confrontation.. (...) On this occasion we should, as always, recur to the law and respect for Human Rights, which are the only possible foundations for guaranteeing that individuals and nations live together in a civilized fashion. We respect the rights of others; however, when we feel our rights are being infringed upon we recur to legal instances to settle the disputes. We are peace lovers; however, we are also aware that peace is based on justice. In keeping with this tradition I hereby inform you that we shall employ all the means provided by International*

> *Law to demand, in dignified manner, that the full enjoyment of our rights to navigate the San Juan River, which has been infringed upon, be restored.* ***We are not going to put any of the lives of our respected police officers in danger. Every single human life is sacred and inviolable. Nonetheless, we do not intend to yield even an inch of our rights****. The Government of the Republic reasserts its firm determination to defend what is ours, through the channels established by International Law. The Costa Ricans have chosen the path of the law as the basis for a long history of peace and solidarity. Just as internally we have based our co-existence on the respect for the rights of others and on social solidarity, we also uphold these values in our international actions. Just as we respect the rights of others, so too those others must respect our rights*" (National simultaneous television broadcast given by the President of the Republic, 13 August 1998).

Given this situation, the Government of the Republic of Costa Rica has shown continued interest in reaching a satisfactory solution to this dispute, by means of extraordinary efforts in favour of dialogue and other mechanisms of peaceful negotiation. As part of these mechanisms, we should mention the exchange of diplomatic letters and the numerous meetings held, in which a dialogue and the exchanging of views within the framework of regional meetings between the Ministers of Foreign Affairs of both countries has been sustained, the most recent of these being the one held within the framework of the IX Rio Summit and XVI Ministerial Meeting of the San Jose Group in Portugal from the 19th to the 26th of February 2000. Likewise, meetings have been held to this effect between the Deputy Ministers of Foreign Affairs in September and October of 1998, August of 1999 and February of 2000. The Republic of Costa Rica has also presented texts for possible agreements on several occasions with a view to re-establishing the exercising of its right to free navigation on the San Juan River.

The Republic of Costa Rica considered the path of dialogue exhausted when, on 2 March 2000, President Miguel Angel Rodriguez contacted President Arnoldo Aleman by telephone with the aim of reaching a definitive agreement on the free navigation of Costa Rican official vessels on the San Juan River. This Costa Rican initiative did not meet with a positive response from the Nicaraguan government and the negotiation stage was thereby considered terminated and we turn to this distinguished organization to promote the application of the mechanisms for the peaceful resolution of controversies in the interests of re-establishing the situation prior to the conflict and of guaranteeing the rights of the free navigation of Costa Rican authorities' vessels on the San Juan River.

The Government of the Republic of Costa Rica, faithful to its peaceful vocation, requests, in light of the abovementioned facts, that by means of your worthy intervention, the Permanent Council be convened to proceed to appoint a special representative to mediate in the matter, promote an effective dialogue and issue recommendations leading to the resolution of the awkward and tense prevailing situation and prevent acts that may disturb the peace in the hemisphere. Consequently, we expressly request that the Bogota Pact and the Inter-American Reciprocal Assistance Treaty be activated, thereby establishing a process of mediation between the parties.

It is equally requested that, in the interests of avoiding any subsequent conflict with the Nicaraguan authorities, the Government of the Republic of Nicaragua be notified of its obligation to find a peaceful solution to this controversy and that it be warned to abstain from preventing, by means of the threat of the use of force or by any other act, the free navigation of official vessels of the Costa Rican authorities carrying their duly registered sevice arms.

Furthermore, it is also expressly requested that the transit of vessels of the revenue police and Costa Rican border control on the San Juan River be re-established, under the same conditions that prevailed prior to the conflict.

I would like to recall the words of the Costa Rican President, Miguel Angel Rodriguez, who, in his speech of 13 August 1998, he said:

> *"Costa Ricans and Nicaraguans can only progress in a fraternal manner and co-exist under the same sky, by finding jointly solutions to true common problems such as poverty, environmental damage and the need to improve cultural and economic exchanges between nations that face challenges in a world where we are all interdependent."*

I avail myself of this opportunity, Mr. President, to renew the assurances of my highest esteem and consideration.

(signature)
Hernan R. Castro H.
Ambassador, Permanent Representative

Honourable President
James Schofield Murphy
Permanent Council
Organization of American States
Washington, D.C.

Misión Permanente de Costa Rica
Ante la Organización de los Estados Americanos
Washington, D.C.

Washington, 3 de marzo de 2000

Honorable Señor Presidente:

Tengo el agrado de dirigirme a Usted en ocasión de comunicarle por su digno medio, al Honorable Consejo Permanente de la Organización de Estados Americanos, la profunda preocupación del Gobierno de la República de Costa Rica en relación con los hechos y controversia que se ha venido suscitando con la República de Nicaragua, quien ha impedido el ejercicio del derecho perpetuo a la libre navegación que la República de Costa Rica posee en el río San Juan, lo que ha constituido una situación susceptible de poner en peligro la paz, y hace necesario el análisis de este tema a la luz de la normativa hemisférica e internacional.

El derecho de la República de Costa Rica a la libre navegación en el río San Juan se ajusta en toda su dimensión a lo dispuesto por el Tratado Cañas-Jeréz de 1858, el Laudo Cleveland de 1888, a la sentencia de la Corte de Justicia Centroamericana de 1916, al Pacto de Amistad entre los Gobiernos de la República de Costa Rica y Nicaragua de 1956, y a todos los demás instrumentos internacionales conexos.

Así, el Tratado Cañas-Jeréz señala en sus artículos 4, 6 y 9 además del derecho a la libre navegación con objetos de comercio, obligaciones de carácter defensivo en el río San Juan, prohibiendo claramente a ambos países ejercer actos de hostilidad allí.

El Laudo Cleveland, por su parte, desarrolla las disposiciones del Tratado Cañas-Jeréz refiriéndose específicamente en su punto II a los alcances y limitaciones de la libre navegación de Costa Rica. En este punto, se excluye la navegación en el río con buques de guerra, pero expresamente se la autoriza con buques de servicio fiscal o como se necesite para la protección del goce de la navegación comercial.

Efectivamente, en aras de poder ejercer la vigilancia fiscal a la que se refiere el artículo citado, para proteger la navegación comercial, debe entenderse que las autoridades costarricenses necesitan de su equipo de protección, incluidas sus armas de reglamento, para cumplir con esta función.

Sin embargo, y a pesar de la normativa citada, el 15 de julio de 1998 la República de Nicaragua impidió unilateralmente la libre navegación, situación que se ha mantenido hasta el día de hoy sin que fructificara el diálogo bilateral y en franco irrespeto, de parte del Gobierno de Nicaragua, al Derecho Internacional.

Como consecuencia de lo anterior, el 30 de julio de 1998, se suscribió un Comunicado Conjunto por parte del señor Jaime Cuadra, Ministro de Defensa de Nicaragua, y el señor Juan Rafael Lizano, Ministro de Seguridad Pública de Costa Rica, mediante el cual se confirmó la facultad de las autoridades costarricenses para navegar por el río San Juan portando sus armas de reglamento.

A pesar de la firma de dicho acuerdo, con plena validez ante el derecho internacional, la Asamblea Nacional de Nicaragua le negó autoridad a la firma del Ministro Cuadra al declarar *"nulo e inexistente"* dicho acuerdo.

AMENAZA DE USO DE LA FUERZA

Por último, y como un agravante a la flagrante violación incoada por el Gobierno de la República de Nicaragua a nuestro derecho a la libre navegación por el río San Juan, con la suspensión arbitraria de esta navegación, así como con la anulación unilateral del acuerdo Lizano-Cuadra, demostró un menosprecio a los principios del derecho, así como una infracción al ordenamiento y normativa jurídica internacional, al amenazar con el uso de la fuerza contra la República de Costa Rica, país sin ejército, si se llegaba a navegar por el río.

Estas manifestaciones, realizadas el 3 de agosto de 1998 durante una visita a las localidades del río San Juan, igualmente contradicen el espíritu de los Convenios bilaterales citados. El Presidente Alemán en dicha oportunidad expresó:

> *"(...) si es necesario hacer uso de la institución de las fuerzas armadas que tiene Nicaragua, vamos a hacer uso de ellas (...) La soberanía de un pueblo no se discute, se defiende con las armas en la mano (...)"* (El Nuevo Diario. Managua, Nicaragua. *Alemán: "Podría tomar las armas"*. Jueves 30 de julio de 1998, pág. 12.)

> *"Somos gente de paz; pensamos en la civilidad pero tenemos la gallardía de defender con, como decía el General Sandino, la soberanía de un pueblo con el fusil en la mano (...) y si es necesario entregar nuestras vidas pues también vamos a entregarlas."* (La Nación. San José, Costa Rica. *Recrudece hostilidad nica*, Martes 4 de agosto de 1998, Sección El País, pág. 6A)"

En contraposición a esta posición del Presidente Alemán, y siendo consecuente con el Derecho Internacional, el Presidente de Costa Rica, Dr. Miguel Angel Rodríguez, evidenció una diferencia importante en la forma de abordar este tema, señalando en su discurso por cadena nacional de radio y televisión, el 13 de agosto de 1998:

> *"Conciudadanos, debe quedar muy claro que vamos a defender firmemente nuestros derechos, por las únicas vías que conocemos los costarricenses: el diálogo y los instrumentos legales. (...) Buscaremos que la justicia se restablezca en este caso, recurriendo a los medios apropiados. Nuestra vía es la de siempre, la pacífica. Es la vía de don José María Castro Madriz, quien nos señaló que la espada es siempre enemiga de la libertad (...) En esta ocasión, debemos basarnos, como siempre, en la ley y el respeto a los Derechos Humanos, únicos cimientos posibles para asegurar la convivencia civilizada entre individuos y entre pueblos. Somos respetuosos del derecho ajeno, pero cuando sentimos que nuestros derechos han sido violados, recurrimos a las instancias del derecho para resolver los conflictos. Somos*

> *amantes de la paz, pero igualmente sabemos que la paz se basa en la justicia. Acorde con esa tradición les informo que utilizaremos todas las vías del Derecho Internacional para exigir, dignamente, que se nos restablezca el disfrute pleno de los derechos que nos han sido lesionados en la navegación del río San Juan. No vamos a exponer la vida de ninguno de nuestros queridos y respetados policías. La vida humana, cada una, es inviolable y sagrada. Pero tampoco cederemos ni un ápice de nuestros derechos. El Gobierno de la República reitera su más firme voluntad de defender lo nuestro, por las vías establecidas por la legalidad internacional. El camino del derecho ha sido elegido por los costarricenses como fundamento de una larga historia de paz y solidaridad. Así como en lo interno hemos basado nuestra convivencia en el respeto al derecho ajeno y en la solidaridad social, también practicamos estos valores en nuestras relaciones internacionales. Así como respetamos los derechos de los demás, los demás también deben respetar nuestros derechos"* (Cadena Nacional de Televisión del señor Presidente de la República, 13 de agosto de 1998)

Ante el panorama planteado, el Gobierno de la República de Costa Rica se ha interesado continuamente en alcanzar una solución satisfactoria a esta diferencia, por medio de ingentes esfuerzos en pro del diálogo y otros mecanismos de negociación pacífica. Como parte de estos mecanismos, citamos el intercambio de notas diplomáticas y la realización de múltiples encuentros, donde se ha sostenido un diálogo e intercambio de posiciones en el marco de reuniones regionales entre los Ministros de Relaciones Exteriores de ambos países, siendo la última en el marco de la IX Cumbre de Río y XVI Reunión Ministerial del Grupo San José, en Portugal del 19 al 26 de febrero de 2000. Asimismo, se han llevado a cabo reuniones para este efecto entre los Viceministros de Relaciones Exteriores, en setiembre y octubre de 1998, agosto de 1999 y febrero de 2000. Igualmente, la República de Costa Rica ha presentado en varias oportunidades, textos para posibles acuerdos de entendimiento en procura de restablecer el ejercicio de su derecho a la libre navegación en el río San Juan.

La República de Costa Rica dio por agotada la vía del diálogo cuando el día 2 de marzo de 2000, el Presidente Miguel Angel Rodríguez se comunicó vía telefónica con el Presidente Arnoldo Alemán con el ánimo de llegar a un acuerdo definitivo sobre la libre navegación de las embarcaciones oficiales costarricenses por el río San Juan. Esta iniciativa costarricense no encontró una respuesta positiva de parte del gobierno nicaragüense, por lo que con ello se da por terminada la etapa del diálogo, y se acude a este distinguido organismo a promover la aplicación de los mecanismos de solución pacífica de controversias en aras de restablecer la situación anterior al conflicto y garantizar los derechos a la libre navegación de embarcaciones de las autoridades costarricenses en el río San Juan.

El Gobierno de la República de Costa Rica, fiel a su vocación pacifista, solicita su atención con los hechos expuestos, que por su digno medio se convoque al Consejo Permanente para que proceda a designar un representante especial para mediar en la situación, facilitar el diálogo efectivo y formular recomendaciones conducentes a resolver la incómoda y tensa situación imperante y a prevenir actos que puedan alterar la paz hemisférica. De esta forma, se solicita expresamente, se active el Pacto de Bogotá y el Tratado Interamericano de Asistencia Recíproca instaurándose un proceso de mediación entre las partes.

Igualmente, solicita que en aras de evitar cualquier ulterior conflicto con las autoridades nicaragüenses, se notifique al Gobierno de la República de Nicaragua su obligación de buscar una solución pacífica a esta controversia, y se le prevenga de abstenerse de impedir mediante la amenaza del uso de la fuerza, o por cualquier otro acto, la libre navegación de embarcaciones oficiales costarricenses portando sus armas de reglamento debidamente registradas.

Adicionalmente, se solicita expresamente que se reanude el tránsito de Embarcaciones de la policía fiscal y de control de fronteras de Costa Rica por el río San Juan, en las mismas condiciones que se daba antes de presentarse el conflicto:

Quiero recordar las palabras del discurso del 13 de agosto de 1998 del Presidente de Costa Rica *Miguel Angel Rodríguez*, quién dijo:

> *"Costarricenses y nicaragüenses sólo podemos desarrollarnos de manera fraterna convivir bajo el mismo cielo, buscando juntos soluciones para los verdaderos problemas comunes, como la pobreza, el deterioro del ambiente y la necesidad de mejorar los intercambios culturales y económicos entre países que enfrentan retos en un mundo donde todos dependemos los unos de otros".*

Hago propicia la oportunidad para manifestarle al señor Presidente las seguridades de mi mayor estima y consideración.

Hernán R. Castro H.
Embajador, Representante Permanente

His Excellency
James Schofield Murphy
Ambassador, Permanent Representative of Belize
To the Organization of American States
President of the Permanent Council of the OAS
Washington, D.C.

Annex 61

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, TO NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, NOTE NO. DM-125-2000, 10 APRIL 2000

TRANSLATION

The Minister of Foreign Affairs and Worship

San Jose, 10 April 2000
DM-125-2000

Your Excellency:

I have the honour to address Your Excellency on the matter of expressing the need to explore other mechanisms for solving the controversy that exists between our two countries, with regards to the navigation of the Costa Rican police with service arms on the lower course of the San Juan River.

As we jointly announced it to the press on concluding the meeting we held in San Jose on 3 April, differences persist in this respect, despite having held bilateral rounds of talks and negotiations on this matter for over a year, and having concluded that same April 3 the rounds of talks that included the presence of the Secretary General of the Organization of American States, in his capacity as facilitator. In accordance with what was also agreed upon in the presence of the Secretary General, our countries must now consider other possible mechanisms for finding a definitive solution to the dispute.

As Your Excellency knows, in article III of the Esquivel-Sevilla Friendship Pact of 21 January 1949, currently in force between the two countries, Costa Rica and Nicaragua agreed to submit the controversies that may arise between them to the methods of the peaceful settlement of international conflicts and to this end they agreed to apply the American Treaty on Pacific Settlement (Pact of Bogota) and give it full effect for the controversies between them, even before this Treaty was formally ratified and entered into force in all the American Republics.

In view of the fact that, in accordance with the hypothesis anticipated in article II of the Pact of Bogota, direct negotiations between our two countries via the usual diplomatic channels for approximately one and a half years have not resulted in the settlement of the existing dispute, even with the presence of the Secretary General of the OAS as facilitator of the talks, the Government of Costa Rica deems it necessary for both countries to make use of the procedures established in this inter-american instrument, in the manner and conditions set down in its articles.

Given the numerous ties that bind Costa Rica and Nicaragua, their shared interests in many areas and the particular characteristics of the existing dispute, the Government of Costa Rica believes that the most appropriate mechanism of those provided for by the Pact of Bogota for attempting to find a solution to the problem is that of mediation, as set forth in articles XI and subsequent of that agreement. The conditions of mediation itself, in the terms of the Pact, offer assurances in the sense that they represent an objective and confidential procedure, which, at the same time, is simple and free from the formalities and costs that other mechanisms provided by International Law could cause.

In accordance with above-mentioned article XI, the role of mediators should fall on one or more American governments or to one or more eminent citizens from any American State not a party to the controversy, in either case chosen by the mutual consent of the parties.

Thus, in compliance with what was agreed upon in San Jose with regard to exploring other means of resolving this controversy, and of the provisions of the Pact of Bogota, the Government of Costa Rica is pleased to formally propose to the Honourable Government of Nicaragua that, by mutual consent, they request the mediation of an Honourable Government of an American State in order to attempt to find an acceptable solution to the dispute. We know there are countries in the hemisphere that would be more than willing to carry out this fraternal mission and that, in addition to having proven credentials in legal and diplomatic matters, profess a cordial friendship to our region and offer, in the opinion of the Government of Costa Rica, sound assurance of the seriousness, objectivity and correctness with which they would undertake their responsibility as mediators, should they accept the request made of them to this effect.

Should the Honourable Government of Nicaragua accept this proposal, the choice of mediator and the terms of the request for mediation to the State that is chosen could be agreed upon through the usual diplomatic channels.

The Government of Costa Rica fraternally urges the Honourable Government of Nicaragua to consider this possibility and is hopeful that it will give an affirmative response, with a view to contributing to strengthen the fraternal relations that have prevailed in the two countries and that are manifested daily in the numerous economic, cultural and family ties, as well as those of cooperation, that bind them, as natural development of geographic neighbourhood and common historical roots.

I avail myself, Your Excellency, of this opportunity to renew the assurance of my highest consideration.

(signature)
Roberto Rojas

His Excellency
Eduardo Montealegre
Nicaraguan Minister of Foreign Affairs
Managua.-

El Ministro de Relaciones Exteriores y Culto

San José, 10 de abril de 2000
DM-125-2000

Excelentísimo señor:

Tengo el honor de saludar a Vuestra Excelencia, en ocasión de plantearle la necesidad de explorar otros mecanismos para la solución de la diferencia que existe entre nuestros dos países, con respecto a la navegación de la policía costarricense con armas de reglamento en el curso inferior del río San Juan.

Como lo anunciamos conjuntamente a la prensa al concluir la reunión que mantuvimos en San José el pasado 3 de abril, persisten las diferencias sobre ese particular, a pesar de haberse realizado durante más de un año rondas bilaterales de diálogo y negociación al respecto, y de haberse ya concluido, ese mismo 3 de abril, con las rondas de diálogo que contaron con la presencia del señor Secretario General de la Organización de los Estados Americanos, con carácter de facilitador. De conformidad con lo que también convinimos entonces en presencia del señor Secretario General, nuestros países han de considerar ahora otros posibles mecanismos para solucionar en forma definitiva el diferendo.

Como es del conocimiento de Vuestra Excelencia, en el artículo III del Pacto de Amistad Esquivel-Sevilla de 21 de enero de 1949, vigente entre ambos países, Costa Rica y Nicaragua convinieron en someter las controversias que surgiesen entre ellas a los métodos de solución pacífica de los conflictos internacionales, y para ello convinieron en aplicar el Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá) y darle plena validez para las controversias entre ellas, aún antes de que ese convenio fuese formalmente ratificado y entrase en pleno vigor entre todas las Repúblicas americanas.

En atención a que, de acuerdo con la hipótesis prevista en el artículo II del Pacto de Bogotá, la negociación directa entre nuestros dos países por los medios diplomáticos usuales, durante alrededor de un año y medio, no ha permitido solucionar el diferendo existente, ni siquiera con la presencia del señor Secretario General de la O. E. A. como facilitador del diálogo, el Gobierno de Costa Rica estima que corresponde ahora que ambos países hagan uso de los procedimientos establecidos en ese instrumento interamericano, en la forma y condiciones previstas en su articulado.

Dados los múltiples lazos que vinculan a Costa Rica y a Nicaragua, la comunidad de sus intereses en muchos campos y las características propias del diferendo existente, el Gobierno costarricense cree que el mecanismo más adecuado de los previstos en el Pacto de Bogotá para tratar de hallar una solución al problema, sería el de la mediación, de que tratan los artículos XI y siguientes de ese convenio. Las condiciones mismas de la mediación, en los términos del Pacto, ofrecen seguridades en el sentido de que representa un procedimiento objetivo y confidencial, a la vez que sencillo y alejado de las formalidades y costos que pudieran representar otros de los mecanismos previstos en el Derecho Internacional.

De conformidad con el artículo XI citado, el papel de mediadores ha de corresponder a uno o más gobiernos americanos, o a uno o más ciudadanos eminentes de cualquier Estado americano extraños a la controversia, escogidos, en uno u otro caso, de común acuerdo por las partes.

En cumplimiento por consiguiente de lo que convinimos en San José en el sentido de explorar otros medios de solución para esta controversia, y de lo dispuesto en el Pacto de Bogotá, para el Gobierno de Costa Rica es grato proponer formalmente al Ilustrado Gobierno de Nicaragua que de común acuerdo soliciten la mediación del algún Ilustrado Gobierno de un Estado americano para tratar de hallar una solución aceptable del diferendo. Tenemos conocimiento de que hay países del hemisferio que estarían en la mejor disposición de cumplir esta fraternal misión y que además de tener probadas credenciales en materia jurídica y diplomática, profesan cordial amistad a nuestra región y ofrecen, a juicio del Gobierno de Costa Rica, una certera garantía de la seriedad, objetividad y corrección con que desempeñarían las responsabilidades de mediadores, en caso de aceptar la solicitud que al efecto se les formule.

Si el Ilustrado Gobierno de Nicaragua acepta esta propuesta, la escogencia del mediador y los términos de la solicitud de mediación al Estado que se elija podrían convenirse por los canales diplomáticos de estilo.

El Gobierno de Costa Rica insta fraternalmente al Ilustrado Gobierno de Nicaragua a considerar esta posibilidad y tiene la esperanza de que dará una respuesta afirmativa, en aras de contribuir a la consolidación de las fraternales relaciones que han imperado entre ambos países y que se manifiestan diariamente en los múltiples vínculos económicos, culturales, familiares y de cooperación que los unen, como desarrollo natural de la vecindad geográfica y las comunes raíces históricas.

Aprovecho la oportunidad para renovar a Vuestra Excelencia el testimonio de mi distinguida consideración,

Roberto Rojas

Excelentísimo señor
Eduardo Montealegre
Ministro de Relaciones Exteriores de Nicaragua
Managua.-

Annex 62

NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, NOTE NO. MRE/DM/4366/04/00, 6 MAY 2000

TRANSLATION

The Minister of Foreign Affairs

6 May 2000
MRE/DM/4366/04/00

Excellency:

I have the honour to address Your Excellency in response to your letter DM-125-2000 in which you proposed the need to explore mechanisms for resolving the controversy that exists between our countries regarding the navigation of the Costa Rican police with service arms on the lower course of the San Juan River.

The area of controversy having been thus defined, it is the opinion of my Government that this is a matter that has already been resolved in the Jerez-Cañas Treaty and the Cleveland Award. On the other hand, an attempt is being made to open to discussion the matter of Nicaragua exercising sovereignty over her territory, which is indisputably and historically established in the various international instruments that recognize Nicaragua's exercise of sovereignty over the entire San Juan River from the lake to its mouth.

It is true that the Honourable Government of Costa Rica has repeatedly declared that it recognizes this sovereignty, however, immediately afterwards it begins to vary the tone of the contents of that sovereignty to such an extent that it leaves it void of content, so that the recognition results in a theoretical statement, which in reality is distorted in practice with pretensions that contradict such statements.

Certainly, at the meeting on the third of April we discussed different topics, among others the need to continue working to attain the goal of finding a satisfactory and respectful solution to the rights of the parties in their respective areas of sovereignty, not having been possible to agree on any solution regarding the search for possible settlement mechanisms. Nonetheless, I agree with Your Excellency in that, for the good of our respective peoples and countries, it is necessary to carry on working towards finding a solution to the dispute, to which neither the Sevilla-Esquivel Friendship Pact nor the Pact of Bogota are applicable.

I regret, however, to have to differ with Your Excellency with regard to mediation being the most adequate mechanism for resolving this situation at hand, even though I agree there are friendly countries in the Hemisphere who would be more than willing to fulfil this fraternal mission, guided by the resolve to offer the assurance of seriousness and objectivity.

In my opinion, mediation is the appropriate mechanism for solving disputes that arise between countries. Nonetheless, in the present case, since this is a matter such as that raised by the Honourable Government of Costa Rica, which has already been definitively resolved by the Jerez-Cañas Treaty and the Cleveland Award, and that, furthermore, deals with the Republic of Nicaragua exercising its sovereignty, this means of solution does not seem appropriate.

In light of this situation, Minister, I fraternally invite you to reflect on what has been expressed in the present letter and to mutually attempt, by common agreement, to find a solution to the dispute that separates us, in the assurance that, for my Government's part, we are firmly resolved to assist in the provisioning and relief of the Costa Rican police posts on the right bank of the lower course of the San Juan River, provided Nicaragua's sovereign rights are not affected.

I regret, once again, Your Excellency, having to differ with regard to the means of solution that you have proposed and I take this opportunity to renew the assurance of my distinguished consideration.

(signature)
Eduardo Montealegre R.

His Excellency
Roberto Rojas Lopez
Minister of Foreign Affairs and Worship
of the Republic of Costa Rica

El Ministro de Relaciones Exteriores

6 de mayo del 2000
MRE/DM/4366/04/00

Excelencia:

Tengo el honor de dirigirme a Vuestra Excelencia en respuesta a su nota DM- 125-2000 en la que planteaba necesidad de explorar mecanismos para la solución de la diferencia que existe entre nuestros países con respecto a la navegación de la policía costarricense con armas de reglamento en el curso inferior del río San Juan.

Precisado así el ámbito de la diferencia, a juicio de mi Gobierno se trata de una cuestión que ya han dejado resuelta el Tratado Jerez-Cañas y el Laudo Cleveland. Por otra parte se pretende abrir a discusión el tema del ejercicio de la soberanía de Nicaragua sobre su territorio, lo cual está indiscutible e históricamente establecido en los diversos instrumentos internacionales que reconocen que Nicaragua ejerce soberanía sobre todo el río San Juan desde, el lago hasta su desembocadura.

Es cierto que reiteradamente el Ilustrado Gobierno de Costa Rica ha afirmado que reconoce esa soberanía, pero, acto seguido, entra a matizar el contenido de esa soberanía a tal punto que la deja vacía de contenido, resultando el reconocimiento en un planteamiento teórico, que en realidad es tergiversado en la práctica con pretensiones que contradicen tales afirmaciones.

Ciertamente, en la reunión del pasado tres de abril conversamos de distintos temas, entre ellos la necesidad de seguir trabajando en la consecución del objetivo de encontrar una solución satisfactoria y respetuosa de los derechos de las partes en sus respectivos ámbitos de soberanía, no habiéndose logrado convenir ningún propósito referido a la búsqueda de posibles mecanismos de solución. No obstante, concuerdo con Vuestra Excelencia en que, para bien de nuestros respectivos pueblos y países, es necesario seguir trabajando en la búsqueda de una solución a la diferencia, a la cual no son aplicables el Pacto de Amistad Sevilla-Esquivel ni el Pacto de Bogotá.

Lamento, sin embargo, tener que diferir con Vuestra Excelencia respecto a que sea la mediación la que constituye el mecanismo más adecuado para la solución de esta situación que nos ocupa, aún cuando coincido en que hay países amigos en el Hemisferio que estarían en la mejor disposición de cumplir esa fraternal misión, guiados por el propósito de ofrecer garantía de seriedad y objetividad.

En mi opinión, la mediación viene a ser el mecanismo apropiado para resolver las diferencias que se producen entre los países. No obstante, en el presente caso al tratarse de una cuestión como la que ha suscitado el Ilustrado Gobierno de Costa Rica, que ya ha sido definitivamente resuelta por el Tratado Jerez-Cañas y el Laudo Cleveland, y además por tratarse de un asunto relativo al ejercicio de la soberanía de la República de Nicaragua, este medio de solución no parece ser el apropiado.

Ante esta situación, Señor Ministro, le invito fraternalmente a que reflexionemos sobre lo expuesto en la presente nota y tratemos de encontrar de común acuerdo la solución a la diferencia que nos separa, en la seguridad de que de parte de mi Gobierno existe el firme propósito de dar toda facilidad para el avituallamiento y relevo de los puestos de la policía costarricense en la margen derecha del curso inferior del río San Juan, siempre que no se afecten los derechos soberanos de Nicaragua.

Reitero a Vuestra Excelencia mi sentimiento de tener que diferir respecto al medio de solución que me ha presentado y aprovecho la oportunidad para renovarle el testimonio de mi distinguida consideración.

Eduardo Montealegre R.

Excelentísimo Señor
Roberto Rojas López
Ministro de Relaciones Exteriores y Culto
de la República de Costa Rica

Annex 63

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, TO NICARAGUAN FOREIGN MINISTER, EDUARDO MONTEALEGRE, NOTE NO. DM-165-2000, 22 MAY 2000

TRANSLATION

The Minister of Foreign Affairs and Worship

22 May 2000
DM-165-2000

Your Excellency:

I am writing in reference to your reply of 6 May of the current year to our proposal of exploring adequate mechanisms for solving the controversy that exists between our countries, according to the terms of my last letter DM-125-2000.

On rejecting the mediation proposed by my Government as one of the most adequate mechanisms for resolving our differences, your communication asserts that it is a matter specific to the internal sovereignty of Nicaragua, and that it is thus defined in the Cañas-Jerez Treaty and in the Cleveland Award. That is why, in your illustrious opinion, the Esquivel-Sevilla Friendship Pact and the Bogota Pact are not applicable to the case, and it is, rather, the domestic laws and rules of your country, as well as any other type of internal regulations that, by virtue of her sovereignty, Nicaragua needs to establish in the future.

Naturally, this opinion cannot be accepted by Costa Rica and it contradicts both the historical reality of the navigation of the river, as well as the views upheld by the Government of Nicaragua itself in some of its formal declarations on this case.

With respect to the historical reality of our relations regarding the San Juan River, it is evident that its legal regime cannot be dealt with as though it were that of the application of the internal legislation of one country or another. If this were the case, such a view would lead to the surprising conclusion – to say the least – that both the Treaty and the awards would have been absolutely unnecessary and futile. Why would one bother to negotiate treaties and seek awards if the matter were purely an internal one, as are criminal, civil or commercial legislation?

The very existence of the Treaty and Award demonstrate, naturally, that this is a very different matter. It is a question, rather, of a special regime established by a Treaty and Award that are characteristic of and specific to Public International Law, which even though it grants sovereignty and sovereign jurisdiction to Nicaragua over the river, it also explicitly and clearly recognizes Costa Rica's *perpetual rights of free navigation.* And although,

according to the Cleveland Award, Costa Rica does not have the right to navigate with vessels of war, - which, in all other respects, as a peaceful nation without an army, we do not possess- it does expressly grant and recognize the authority –which the Government of Nicaragua cannot restrict unilaterally, neither by its own acts nor by internal legislation- to ***navigate said river with vessels of the revenue service** as may be related to and connected with her enjoyment of the purposes of commerce accorded to her...or as may be necessary for the **protection of said enjoyment**.*

So much so that Your Excellency, in his presentation before the Permanent Council of the Organization of the American States on 8 March, had to recognize that the essence of the matter and the dispute caused have to do with a different legal interpretation of the scope and meaning of the Treaty and the Cleveland Award, made by each of our States. On this occasion, Your Excellency declared, on rejecting the eventual application of the Treaty of Reciprocal Assistance, that: "*This instrument does not have the slightest application in the present case given that the dispute does not arise from an act of aggression on the part of Nicaragua **but rather from a different interpretation of the instruments that govern the relations between both nations***".

And, as Your Excellency well knows, these instruments are none other than the Cañas-Jerez Treaty and the Cleveland Award, and not the Constitution or the internal legislation of Nicaragua.

It is a matter, essentially, in this particular case, of reconciling our Governments' dissimilar interpretations of two of the basic concepts contained in those instruments of Public International Law that govern our rights and faculties. And this does not concern other matters or aspects of our bilateral relations, but, rather, specifically one of the aspects of the perpetual right to free navigation that Costa Rica has in the lower course of the San Juan River.

It was your Government itself, Your Excellency, that, on questioning, at the end of the XIX century, the right of Costa Rica to navigate with vessels of war and with vessels of the revenue service, recognized that it was logical and evident that the latter, by their very nature and the purpose of protection that they exercised, should navigate armed, as it was logic and evident.

As I pointed out in my speech in the Permanent Council of the Organization of the American States literally, in its pleading before President Cleveland your Honourable Government defined the ***vessels of the revenue service*** in the following terms, and I quote:

"The vessels of the revenue service are akin to vessels of war. While they have not all the means of aggression as the

> former, still they are armed vessels, capable of enforcing their demands by force, and must be classed in the category of vessels of war."

This is why it is surprising that, now, so many years later, a different interpretation that contradicts that recognized by the Nicaraguan State itself should be extemporized and, above all, that it seeks to deny the applicability of the Treaty and the Award and substitute it for an arbitrary attempt to impose the application of the internal regulations of Nicaragua on the river, as if the former did not exist and did not govern the specific regulations of Costa Rican navigation on the lower San Juan.

It is a matter, therefore, even under the Government of Nicaragua's own terms expressed in its plea before President Cleveland and, more recently, in your Ministry of Foreign Affairs' presentation before the Organization of the American States, of a divergence on the interpretation of the terms and scope of a Treaty and an Award of an international nature, which, in turn, are governed in their interpretation and application, as it could not be otherwise, by the principles, regulations and procedures of Public International Law.

It is in view of all these juridical elements; and the continuing eagerness of our Government to safeguard the good relations between our two Governments and nations, that I am, once again, taking up the suggestion that Your Excellency makes of his willingness to *continue working towards finding a solution to the difference*, and of *attempting by mutual consent to resolve the difference that separates us*.

Needless to say that Costa Rica is more than willing to do so, in accordance with what was agreed upon in San Jose on 3 April 2000; and given that we have concluded the bilateral negotiation stage, and that the Honourable Government of Nicaragua rejects the possibility of mediation or any of the other mechanisms of the Bogota Pact, I request that Your Excellency inform me of which other means could be jointly adopted in order to put an end to the dispute so that my Government may assess any useful suggestion that Your Excellency may have in mind.

I renew, Your Excellency, the testimony of my distinguished consideration.

(signature)
Roberto Rojas

His Excellency
Eduardo Montealegre
Nicaraguan Minister of Foreign Affairs
Managua, Nicaragua

El Ministro de Relaciones Exteriores y Culto

22 de mayo del 2000
DM-165-2000

Excelentísimo señor:

Me refiero a su contestación del 6 de mayo del presente año a nuestra propuesta de explotar mecanismos adecuados para la solución de la diferencia que existe entre nuestros países, según los términos de mi última nota DM-125-2000.

Al rechazar la mediación propuesta por mi Gobierno, como uno de los mecanismos más adecuados para la solución de nuestras diferencias, se afirma en su comunicación que se trata de un tema propio de la soberanía interna de Nicaragua, y que así aparece decidido en el Tratado Cañas-Jerez y en el Laudo Cleveland. Por eso mismo, según su ilustrado criterio, no son aplicables al caso el Pacto de Amistad Esquivel-Sevilla ni el Pacto de Bogotá, sino las leyes y reglamentos internos de su país, así como cualquier tipo de regulaciones internas que, en virtud de su soberanía, en el futuro Nicaragua requiera establecer.

Desde luego que para Costa Rica tal criterio no es en absoluto de recibo y entra en contradicción tanto con la realidad histórica de la navegación en el río, como con lo sostenido por el propio Gobierno de Nicaragua en algunas de sus manifestaciones formales sobre el caso.

En cuanto a la realidad histórica de nuestras relaciones respecto al río San Juan, es obvio que su régimen legal no se puede tratar como si fuera el de la aplicación de una legislación interna de uno u otro país. De ser así, tal criterio conduciría a la sorprendente conclusión -para decir lo menos- de que tanto el Tratado como los laudos habrían sido absolutamente innecesarios e inútiles. ¿Para qué molestarse en negociar tratados y gestionar laudos, si el tema era un asunto puramente interno, tal como lo son la legislación penal, civil o comercial?

Desde luego, la simple existencia del Tratado y Laudo evidencian que se trata de algo muy diferente. Se trata, más bien, de que estamos ante un régimen especial establecido por un Tratado y Laudo propios y específicos del Derecho Internacional Público, que si bien otorga soberanía y sumo

imperio a Nicaragua sobre el río, de manera explícita y clara también, reconoce a Costa Rica sus *derechos perpetuos de libre navegación.* Y aunque, según el Laudo Cleveland, Costa Rica no tiene derecho de navegar con buques de guerra, -que por lo demás, como nación pacífica y sin ejército, no tenemos- expresamente sí se le otorga y reconoce la facultad -que el Gobierno de Nicaragua no puede restringir unilateralmente, ni por actos propios ni por legislación interna- de *navegar en dicho río con buques del servicio fiscal relacionados y conexionados con el goce de los objetos de comercio que le está acordado...y que sean necesarios para la protección de dicho goce.*

Tanto es así, que Vuestra Excelencia, en su presentación ante el Consejo Permanente de la Organización de Estados Americanos del 8 de marzo pasado, tuvo que reconocer que la esencia de la cuestión y el diferendo planteados, versa sobre una diferente interpretación jurídica del alcance y significado del Tratado y del Laudo Cleveland, por cada uno de nuestros Estados. Dijo entonces Vuestra Excelencia, al rechazar la eventual aplicación del Tratado de Asistencia Recíproca: *"Este instrumento no tiene la más mínima aplicación en el presente caso puesto que el diferendo no surge de un acto de agresión de parte de Nicaragua sino de una diferente interpretación de los instrumentos que rigen las relaciones entre ambas naciones."*

Y, como Vuestra Excelencia sabe perfectamente, esos instrumentos no son otros que el Tratado Cañas-Jerez y el Laudo Cleveland, y no la Constitución o la legislación interna nicaragüenses.

Se trata, en esencia, en el caso que nos ocupa, de conciliar las interpretaciones disímiles de nuestros Gobiernos sobre dos de los conceptos básicos contenidos en esos instrumentos del Derecho Internacional Público que rigen nuestros derechos y facultades. Y esto no sobre otros temas o dimensiones de nuestras relaciones bilaterales, sino de modo específico sobre uno de los aspectos del derecho perpetuo de libre navegación que tiene Costa Rica en el curso inferior del Río San Juan.

Fue su propio Gobierno, Excelencia, el que al cuestionar a fines del siglo XIX el derecho de Costa Rica a navegar con buques de guerra y con buques fiscales, reconoció que éstos, por su propia naturaleza y por la función de protección que debían ejercer, tenían que navegar armados, como era lógico y evidente.

Como lo señalé en mi intervención en el Consejo Permanente de la Organización de Estados Americanos, textualmente, en su alegato ante el Presidente Cleveland, su Ilustrado Gobierno definió las ***naves de servicio fiscal*** en los siguientes términos:

> "Las naves de servicio fiscal son del mismo género que las naves de guerra. Aunque no tienen todos los medios ofensivos de las últimas, aún así son naves de guerra, capaces de respaldar sus demandas por la fuerza, y deben ser clasificadas en la categoría de naves de guerra". (En el original, "Vessels of revenue service are akin to vessels of war. While they have not all the means of aggression as the former, still they are armed vessels, capable of enforcing their demands by force, and most be classed in the category of vessels of war.")

Por eso extraña que ahora, tantos años después, se improvise una interpretación diferente contraria con lo reconocido por el propio Estado nicaragüense, y sobre todo que busque negar la aplicabilidad del Tratado y Laudo y sustituirla por un arbitrario intento de que lo aplicable sea la reglamentación interna que Nicaragua quiera imponer en el río, como si aquéllos no existieran y no rigieran el régimen específico de la navegación costarricense en el bajo San Juan.

Se trata, pues, aún en los propios términos del Gobierno de Nicaragua en su alegato ante el Presidente Cleveland, y en fecha más reciente en la presentación de esa Cancillería ante la Organización de Estados Americanos, de una divergencia en la interpretación de los términos y alcances de un Tratado y un Laudo de carácter internacional; el cual, por otra parte, está regido en su interpretación y aplicación, como no podría ser de otra manera, por los principios, normas y procedimiento del Derecho Internacional Público.

Es en atención a todos estos elementos jurídicos; y al afán permanente de nuestro Gobierno de resguardar las buenas relaciones entre nuestros dos Gobiernos y pueblos, que me permito retomar la sugerencia que Su Excelencia hace de su disposición de ***seguir** trabajando en la búsqueda de una solución a la diferencia*, y a que *tratemos de encontrar de común acuerdo la solución a la diferencia que nos separa.*

El Ministro de Relaciones Exteriores y Culto

De más está decirle que Costa Rica está en la mejor disposición de hacerlo, de conformidad con lo que convinimos en San José el 3 de abril del 2000, y dado que la etapa del diálogo bilateral la dimos por cumplida, y que el Ilustrado Gobierno de Nicaragua rechaza la posibilidad de una mediación o de cualesquiera otros mecanismos del Pacto de Bogotá, solicito a Vuestra Excelencia que me indique cuáles serían los otros medios a los que se podría recurrir conjuntamente para poner fin al diferendo y para que mi Gobierno pueda evaluar cualquier sugerencia útil, que tenga en mente Vuestra Excelencia.

Renuevo a Vuestra Excelencia el testimonio de mi distinguida consideración,

Roberto Rojas

Excelentísimo señor
Eduardo Montealegre
Ministro de Relaciones Exteriores de Nicaragua
Managua, Nicaragua

Annex 64

PRESIDENT OF COSTA RICA, MIGUEL ANGEL RODRÍGUEZ ECHEVERRÍA, TO PRESIDENT OF NICARAGUA, ARNOLDO ALEMÁN LACAYO, 28 JUNE 2000

TRANSLATION

Miguel Angel Rodriguez E.
President of the Republic

San Jose, 28 June 2000

MR. ARNOLDO ALEMAN LACAYO
PRESIDENT
REPUBLIC OF NICARAGUA
PRESENT

DEAR MR. PRESIDENT:

As I have stated on many occasions and reiterated in person during our meeting in Panama City on 17 June, the Government and people of Costa Rica are motivated by feelings of fraternity and cooperation towards Nicaragua, to which, as well as its geography, it is bound by indissoluble family, historical, cultural and economic ties. In this vein, it is of fundamental importance that the differences which may arise between our countries be resolved amicably.

With regard to the conversations we held in Panama and in accordance with your interest in Costa Rica presenting a concrete proposal on the terms of the navigation of Costa Rican police on the lower course of the San Juan River, I would like to inform you that Costa Rica's intention in this respect is that the *modus operandi* that functioned temporarily prior to July 1998, by which it was allowed to navigate on this waterway with vessels carrying Costa Rican police, having previously informed the Nicaraguan authorities in each case, be re-established. For its part, Costa Rica is more than willing to not navigate the San Juan River with police carrying their police equipment without having informed the Nicaraguan authorities in that area previously, each time they patrol the San Juan.

The rights that correspond to Costa Rica in accordance with the Cañas-Jerez treaty and the Cleveland Award are, furthermore, endorsed by the will and consensus of the Costa Rican Ministry of Public Security and the Nicaraguan Ministry of Defence who, on numerous occasions, have carried out activities of co-ordination in the border region.

I would also like to reiterate, once more, the Costa Rican Government's highest respect for the dominion and sovereign jurisdiction that Nicaragua has over the

entire course of the San Juan River, and that it trusts the Government of Nicaragua, for its part, will continue to respect the rights that correspond to Costa Rica regarding the lower course of this river, in accordance with the international instruments currently in force between the two countries and in the manner they traditionally have been exercised.

With the firm hope that overcoming the difference that has arisen between our countries regarding this matter will allow for progress in other areas of common interest and for strengthening the mechanisms of understanding and cooperation that unite Costa Rica and Nicaragua, and the Central American region as a whole, I would like to take this opportunity to renew the assurances of my highest consideration,

(signature)
MIGUEL ANGEL RODRIGUEZ ECHEVERRIA
PRESIDENT OF THE REPUBLIC

(seal)
THE PRESIDENT
REPUBLIC OF COSTA RICA

Miguel Angel Rodríguez E.
PRESIDENTE DE LA REPUBLICA

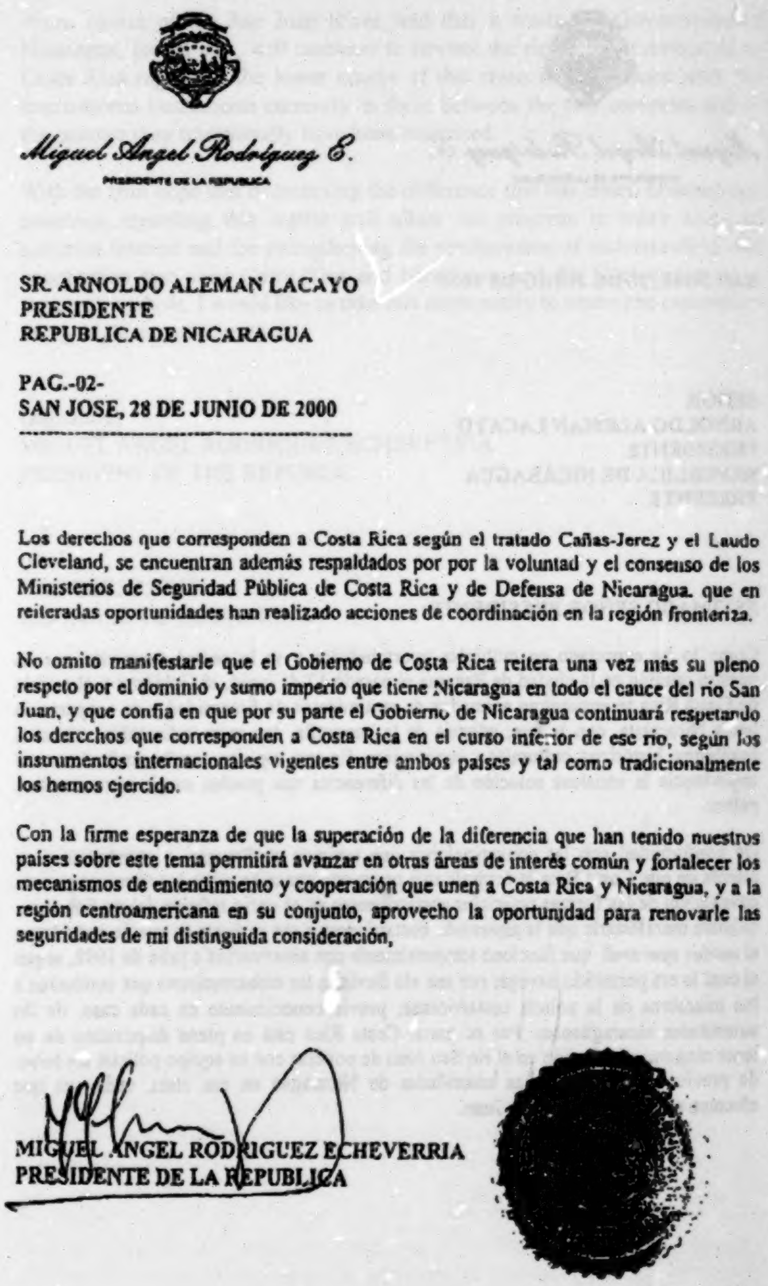
SAN JOSE, 28 DE JUNIO DE 2000

SEÑOR
ARNOLDO ALEMAN LACAYO
PRESIDENTE
REPUBLICA DE NICARAGUA
PRESENTE

ESTIMADO SEÑOR PRESIDENTE:

Como lo he expresado en múltiples oportunidades y se lo reiteré personalmente en nuestra reunión en la ciudad de Panama el pasado 17 de junio, el Gobierno y el pueblo de Costa Rica se encuentran animados de sentimientos de fraternidad y de cooperación hacia Nicaragua, con la que, además de la geografía, los unen indisolubles vínculos familiares, históricos, culturales y económicos. En este espíritu, resulta de fundamental importancia la amistosa solución de las diferencias que puedan surgir entre nuestros países.

De conformidad con las conversaciones que tuvimos en Panamá, y atendiendo a su interés de que Costa Rica le formule una propuesta concreta sobre los términos para la navegación de las fuerzas policiales costarricenses en el curso inferior del río San Juan. quisiera manifestarle que la aspiración costarricense a ese respecto es que se restablezca el *modus operandi* que funcionó temporalmente con anterioridad a julio de 1998, según el cual le era permitido navegar por esa vía fluvial a las embarcaciones que conducían a los miembros de la policía costarricense, previo conocimiento en cada caso, de las autoridades nicaragüenses. Por su parte, Costa Rica está en plena disposición de no tener ninguna navegación en el río San Juan de policías con su equipo policial sin haber de previo comunicado a las autoridades de Nicaragua en esa zona, cada vez que efectúen recorridos por el San Juan.



Miguel Angel Rodríguez E.
PRESIDENTE DE LA REPUBLICA

SR. ARNOLDO ALEMAN LACAYO
PRESIDENTE
REPUBLICA DE NICARAGUA

PAG.-02-
SAN JOSE, 28 DE JUNIO DE 2000

Los derechos que corresponden a Costa Rica según el tratado Cañas-Jerez y el Laudo Cleveland, se encuentran además respaldados por por la voluntad y el consenso de los Ministerios de Seguridad Pública de Costa Rica y de Defensa de Nicaragua. que en reiteradas oportunidades han realizado acciones de coordinación en la región fronteriza.

No omito manifestarle que el Gobierno de Costa Rica reitera una vez más su pleno respeto por el dominio y sumo imperio que tiene Nicaragua en todo el cauce del río San Juan, y que confía en que por su parte el Gobierno de Nicaragua continuará respetando los derechos que corresponden a Costa Rica en el curso inferior de ese río, según los instrumentos internacionales vigentes entre ambos países y tal como tradicionalmente los hemos ejercido.

Con la firme esperanza de que la superación de la diferencia que han tenido nuestros países sobre este tema permitirá avanzar en otras áreas de interés común y fortalecer los mecanismos de entendimiento y cooperación que unen a Costa Rica y Nicaragua, y a la región centroamericana en su conjunto, aprovecho la oportunidad para renovarle las seguridades de mi distinguida consideración,

MIGUEL ANGEL RODRIGUEZ ECHEVERRIA
PRESIDENTE DE LA REPUBLICA

Annex 65

PRESIDENT OF NICARAGUA, ARNOLDO ALEMÁN LACAYO,
TO PRESIDENT OF COSTA RICA,
MIGUEL ANGEL RODRÍGUEZ ECHEVERRÍA
29 JUNE 2000

TRANSLATION

(seal)
Republic of Nicaragua
Central America

PRESIDENCY OF THE REPUBLIC

29 June 2000

Dear Mr. President:

Guided by the utmost readiness to reach an understanding and, taking into account the importance for both countries of preserving and promoting amicable relations and cooperation, allow me to acknowledge receipt of your letter containing your proposal for resolving the situation at hand.

I must express my satisfaction at your Government's statement reiterating its highest respect for Nicaragua's dominion and sovereign jurisdiction over the San Juan River, from its origin at the lake to its mouth in the Carribean Sea, a premise that constitutes the starting point of our conversations on the matter.

At the same time, I must reiterate the fact that my Government believes no situation has arisen that modifies, alters or changes the specific right of navigation with *objetos de comercio* that the treaty of 1858 granted to Costa Rica, according to their needs of that time to use the San Juan River as a means of commercial communication.

Having clarified the aforementioned, I am pleased to express the willingness of my Government to reestablish the modus operandi that the border authorities of both countries applied temporarily in 1998, within the framework of the cooperation effort that had been developing since 1995, following the signing of the Joint Communiqué between the Nicaraguan Army and the Costa Rican Ministry of Public Security. In this respect, my Government is willing to reestablish the cooperation that Nicaragua offered Costa Rica for the purposes of provisioning their border posts in the lower part of the San Juan River, thus allowing the Costa Rican police authorities to navigate that part of the river, with the acquiescence, in each case, of the Nicaraguan authorities. Said navigation would not involve, as it did not do so previously, the exercising of any act of jurisdiction, neither will it adversely affect Nicaragua's authority as territorial sovereign.

Nicaragua's willingness to this effect is based on the desire to strengthen the ties of friendship and cooperation that should prevail between our sister and neighbouring nations, which share a common historic background.

In the hope that the current situation may be overcome in the briefest possible period, for the good of our nations, I assure you, once again, that Nicaragua will continue to respect, as it always has done, the treaty of limits of 1858 and the award of 1888, these being the instruments that define the legal framework for the respective rights of our States.

I should like to avail myself of this opportunity to renew, President and friend, the assurance of my highest and distinguished consideration.

(signature)
Arnoldo Aleman Lacayo

His Excellency
Miguel Angel Rodriguez
President of the Republic of Costa Rica
His Office

PRESIDENCIA DE LA REPUBLICA

29 de junio de 2000

Estimado Señor Presidente:

Guiado por la mejor disposición de alcanzar un entendimiento y tomando en cuenta la importancia que para ambos países posee la preservación y fomento de las relaciones de amistad y cooperación, me permito acusar recibo de su carta que contiene su propuesta para la solución de la situación que nos ocupa.

Debo expresar mi satisfacción por la manifestación expresa de su Gobierno, de reiterar el pleno respeto por el dominio y sumo imperio que corresponde a Nicaragua sobre el río San Juan, desde su nacimiento en el lago hasta su desembocadura en el mar Caribe, premisa que constituye el punto de partida de nuestras conversaciones sobre el tema.

Al mismo tiempo, debo reiterar que mi Gobierno considera que no se ha producido situación alguna que modifique, altere o cambie el específico derecho de navegación con objetos de comercio que el tratado de 1858 concedió a Costa Rica, en función de las necesidades que tenía en aquellos años, de utilizar el río San Juan como medio de comunicación comercial.

Aclarado lo anterior, me complace expresarle la disposición de mi Gobierno de restablecer el modus operandi que las autoridades fronterizas de ambos países aplicaban de forma temporal en 1998, en el marco del esfuerzo de cooperación que se venía desarrollando desde 1995, después de la firma de Comunicado Conjunto entre el Ejército de Nicaragua y el Ministerio de Seguridad Pública de Costa Rica. En este sentido, mi Gobierno está dispuesto a restablecer la cooperación que Nicaragua prestaba a Costa Rica, a efectos de avituallamiento de sus puestos fronterizos en la parte inferior del río San Juan, por medio del cual se permitía a las autoridades policiales de Costa Rica transitar por esa parte del río, con la adquiesencia, en cada caso, de las autoridades nicaragüenses. Dicha navegación no implicaría, como no implicaba anteriormente, el ejercicio de acto de jurisdicción alguno, como tampoco resultar en menoscabo de las competencias que corresponden a Nicaragua como soberano territorial.

PRESIDENCIA DE LA REPUBLICA

La disposición de Nicaragua, a los efectos expresados, se basa en el ánimo de fortalecer los lazos de amistad y cooperación que deben prevalecer entre dos pueblos hermanos y vecinos, que comparten un origen histórico común.

En la esperanza de que pueda superarse en el plazo más breve posible, en beneficio de nuestros pueblos, la situación existente, le reitero a Usted la seguridad de que Nicaragua seguirá respetando, como siempre lo ha hecho, el tratado de límites de 1858 y el laudo de 1888, instrumentos que establecen el marco jurídico de los respectivos derechos de nuestros Estados.

Aprovecho la ocasión para expresarle, Presidente y amigo, las muestras de mi más alta y distinguida consideración.

Arnoldo Alemán Lacayo

Excelentísimo Señor
Miguel Angel Rodríguez
Presidente de la República de Costa Rica
Su Despacho

Annex 66

PRESIDENT OF COSTA RICA, MIGUEL ANGEL RODRÍGUEZ ECHEVERRÍA, TO PRESIDENT OF NICARAGUA, ARNOLDO ALEMÁN LACAYO,

29 JULY 2000

TRANSLATION

Miguel Angel Rodriguez E.
President of the Republic

San Jose, 29 July 2000

Mr. President:

I have the honour to address you in reference to your letter of 29 June in which you reply favourably to my interest that our two countries find a solution to the difference that has arisen regarding the scope of Costa Rica's right to free navigation on the San Juan River.

In this respect, it was particularly pleasing to verify that we fully agree on three fundamental aspects: a) that the sovereignty over the entire course of the San Juan River corresponds to Nicaragua; b) that, in accordance with the Cleveland Award of 1888, which constitutes an obligatory interpretation of the Cañas-Jerez treaty of limits of 1858, Costa Rica has the perpetual right of free navigation on the lower course of the river for purposes of commerce, and c) that since 1888 nothing has occurred to change this legal status. I also consider it of great importance as a step forward in resolving the dispute that your letter contain an expression of willingness to re-establish the *modus operandi* that existed until July 1998, in which the vessels carrying members of the Costa Rican police could navigate on the lower course of the river, having previously informed the Nicaraguan authorities in each case.

Regrettably, in the conversations held, subsequent to your letter, between the Nicaraguan Minister of Defence and the Costa Rican Minister of Public Security with a view to putting these demonstrations of willingness into practice, it has still not been possible to reach an agreement on the reestablishment of the *modus operandi*, or on the procedures by which Costa Rica, in each case, would inform Nicaragua, respectively, of the transit of Costa Rican police on the lower San Juan. This situation deeply concerns me and I hope that with the help of your valuable support it will be possible to overcome it and thus put the contents of our letters of 28 and 29 June into practice. In this respect, I have attempted to contact you by telephone over the past few days, however, unfortunately, this has not been possible due to your multiple commitments and I have, therefore, been forced to recur to this means in order to procure your valuable help in overcoming the abovementioned problem.

I reiterate, Mr. President, Costa Rica's interest in finding, together with Nicaragua, a definitive solution to this dispute and in strengthening the fraternal harmony that should prevail over our two nations that share such close and numerous ties. I have high hopes that a similar attitude will be expressed by Nicaragua and its authorities and that this will allow us to join forces with a view to constructing a bright future.

I would like to take this opportunity to renew the assurances of my highest consideration,

(signature)
MIGUEL ANGEL RODRIGUEZ ECHEVERRIA
(seal)
THE PRESIDENT
REPUBLIC OF COSTA RICA

MR.
ARNOLDO ALEMAN LACAYO
PRESIDENT OF NICARAGUA
MANAGUA

Miguel Angel Rodríguez E.
PRESIDENTE DE LA REPUBLICA

San José, 29 de julio de 2000.

Señor Presidente:

Al saludarle atentamente, deseo referirme a su nota del pasado 29 de junio, en la cual respondió favorablemente a mi interés de que nuestros dos países encuentren una solución de la diferencia que han mantenido con respecto a los alcances del derecho de libre navegación de Costa Rica en el río San Juan.

Sobre el particular, ha sido especialmente satisfactorio constatar que coincidimos plenamente en tres elementos fundamentales: a) que la soberanía sobre el curso del río San Juan, en toda su extensión, corresponde a Nicaragua; b) que, de acuerdo con el Laudo Cleveland de 1888, que constituye una interpretación obligatoria del tratado de límites Cañas-Jerez de 1858, Costa Rica tiene derechos perpetuos de libre navegación en el curso inferior del río con propósitos de comercio, y c) que desde 1888 no ha sucedido nada que modifique esa situación jurídica. También he considerado de suma importancia, como un paso adelante en la solución del diferendo, la manifestación de voluntad contenida en su nota, en el sentido de estar en disposición de que se restablezca el *modus operandi* existente hasta julio de 1998, según el cual las embarcaciones en que viajaban miembros de la policía costarricense podían navegar en el curso inferior del río, con previo conocimiento, en cada caso, de las autoridades de Nicaragua.

Lamentablemente, en las conversaciones que con posterioridad a su nota ha mantenido el Ministro de Defensa de Nicaragua con el de Seguridad Pública de Costa Rica, con miras a poner en ejecución esas manifestaciones de voluntad, todavía no ha sido posible alcanzar un acuerdo sobre el restablecimiento del *modus operandi*, ni sobre los procedimientos mediante los cuales Costa Rica, en cada caso, haría la correspondiente comunicación a Nicaragua sobre el tránsito de policías costarricenses en el bajo San Juan. Me preocupa profundamente esta situación, y espero que mediante su valioso concurso sea posible superarla y dar así concreción a lo contenido en nuestras notas de 28 y 29 de junio. Con tal propósito, he tratado de localizarlo por la vía telefónica durante los últimos días, pero lamentablemente eso no ha resultado posible en virtud de sus múltiples ocupaciones, por lo que me veo obligado a recurrir a esta vía para procurar su valioso concurso a fin de superar el inconveniente señalado.

Miguel Ángel Rodríguez E.
PRESIDENTE DE LA REPUBLICA

Pág. 2

Le reitero, señor Presidente, el interés de Costa Rica de encontrar, conjuntamente con Nicaragua, una solución definitiva a este diferendo, y de consolidar la fraternal armonía que debe reinar entre dos países que comparten tan estrechos y múltiples vínculos. Tengo la firme esperanza de que haya una actitud similar en Nicaragua y en sus autoridades, y que ello nos permita aunar esfuerzos con miras a la construcción de un fecundo porvenir.

Aprovecho la oportunidad para renovarle el testimonio de mi distinguida consideración,

MIGUEL ÁNGEL RODRÍGUEZ ECHEVERRÍA

SEÑOR
ARNOLDO ALEMAN LACAYO
PRESIDENTE DE NICARAGUA
MANAGUA

Annex 67

PRESIDENT OF NICARAGUA, ARNOLDO ALEMÁN LACAYO,
TO PRESIDENT OF COSTA RICA,
MIGUEL ÁNGEL RODRÍGUEZ ECHEVERRÍA.
3 AUGUST 2000

TRANSLATION

(seal)
Republic of Nicaragua
Central America

PRESIDENCY OF THE REPUBLIC

3 August 2000

Mr. President:

I have the honour to address Your Excellency to acknowledge receipt of your letter of 29 of July in which you express your concern for the fact that the defence and security authorities of both countries have still not reached an agreement regarding the reestablishment of the *modus operandi* that existed between 1995 and 1998, or on the procedures by which the Costa Rican authorities would navigate a predetermined stretch of the San Juan River with the acquiescence, in each case, of the Nicaraguan authorities. Said consent, in each of the cases, is to be expressed by the national authorities fully exercising their sovereign attributes.

In this respect, allow me to express to you that I fully share your concern, however, I have been informed of a series of coincidental operative aspects that constitute evident progress in the talks between both authorities, leaving pending situations that require, on our part, the concurrance of other Powers of State, in accordance with our internal legislation. As I am committed to resolving this situation and totally convinced of the importance of strengthening relations between two sister countries, I have personally taken steps before the relevant authorities in order to speed up the necessary procedures.

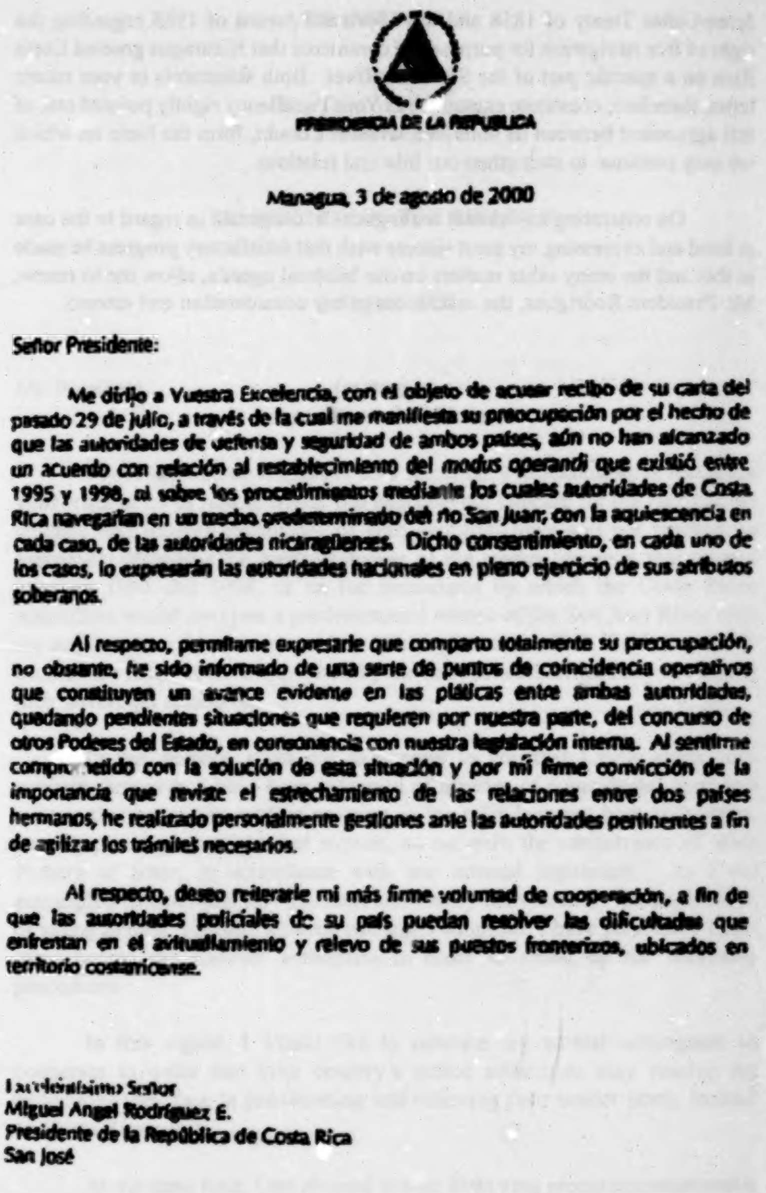
In this regard, I would like to reiterate my utmost willingness to cooperate in order that your country's police authorities may resolve the difficulties they face in provisioning and relieving their border posts, located on Costa Rican soil.

At the same time, I am pleased to note from your recent communication that, as in your letter of 29 June, you reiterate the fact that "the sovereignty over the entire course of the San Juan River corresponds to Nicaragua." I must, likewise, reiterate our position of unlimited respect for that stipulated in the

Jerez-Cañas Treaty of 1858 and the Cleveland Award of 1888 regarding the right of free navigation for purposes of commerce that Nicaragua granted Costa Rica on a specific part of the San Juan River. Both statements in your recent letter, therefore, constitute examples, as Your Excellency rightly pointed out, of full agreement between us both that, without a doubt, form the basis on which we may continue to strengthen our bilateral relations.

On reiterating my utmost willingness to cooperate in regard to the case at hand and expressing my most sincere wish that satisfactory progress be made in this and the many other matters on our bilateral agenda, allow me to renew, Mr. President Rodríguez, the assurances of my consideration and esteem.

(signature)
Arnoldo Aleman Lacayo



PRESIDENCIA DE LA REPUBLICA

Managua, 3 de agosto de 2000

Señor Presidente:

Me dirijo a Vuestra Excelencia, con el objeto de acusar recibo de su carta del pasado 29 de julio, a través de la cual me manifiesta su preocupación por el hecho de que las autoridades de defensa y seguridad de ambos países, aún no han alcanzado un acuerdo con relación al restablecimiento del *modus operandi* que existió entre 1995 y 1998, al sobre los procedimientos mediante los cuales autoridades de Costa Rica navegarían en un trecho predeterminado del río San Juan, con la aquiescencia en cada caso, de las autoridades nicaragüenses. Dicho consentimiento, en cada uno de los casos, lo expresarán las autoridades nacionales en pleno ejercicio de sus atributos soberanos.

Al respecto, permítame expresarle que comparto totalmente su preocupación, no obstante, he sido informado de una serie de puntos de coincidencia operativos que constituyen un avance evidente en las pláticas entre ambas autoridades, quedando pendientes situaciones que requieren por nuestra parte, del concurso de otros Poderes del Estado, en consonancia con nuestra legislación interna. Al sentirme comprometido con la solución de esta situación y por mi firme convicción de la importancia que reviste el estrechamiento de las relaciones entre dos países hermanos, he realizado personalmente gestiones ante las autoridades pertinentes a fin de agilizar los trámites necesarios.

Al respecto, deseo reiterarle mi más firme voluntad de cooperación, a fin de que las autoridades policiales de su país puedan resolver las dificultades que enfrentan en el avituallamiento y relevo de sus puestos fronterizos, ubicados en territorio costarricense.

Excelentísimo Señor
Miguel Angel Rodríguez E.
Presidente de la República de Costa Rica
San José

PRESIDENCIA DE LA REPUBLICA

A su vez, me complace recibir en su reciente misiva, la reiteración de lo expresado en su nota del 29 de junio pasado, en el sentido que "la soberanía sobre el curso del río San Juan, en toda su extensión, corresponde a Nicaragua". Al mismo tiempo, debo reiterarle nuestra posición de irrestricto respeto a lo dispuesto por el Tratado Jerez-Cañas de 1858 y el Laudo Cleveland de 1888, con relación al derecho de libre navegación con objetos de comercio, que Nicaragua concedió a Costa Rica, en determinado trecho del río San Juan. Ambas expresiones consignadas en su reciente misiva, constituyen pues, elementos, como Vuestra Excelencia bien lo manifiesta, de una plena coincidencia entre ambos, lo cual, sin lugar a dudas sienta las bases para continuar avanzando en el fortalecimiento de nuestras relaciones bilaterales.

Al reiterarle mi más firme voluntad de cooperación con relación al caso que nos ocupa y expresarle mi más sincero deseo de avanzar satisfactoriamente en éste y en otros de los muchos temas que componen nuestra agenda bilateral, me permito renovarle, Señor Presidente Rodríguez, las muestras de mi distinguida consideración y estima.

Arnoldo Alemán Lacayo

Annex 68

COSTA RICAN ACTING FOREIGN MINISTER, ELAYNE WHYTE, TO NICARAGUAN ACTING FOREIGN MINISTER, JOSÉ ADAN GUERRA, NOTE NO. DVM-420-00, 28 SEPTEMBER 2000

TRANSLATION

The Deputy Minister of Foreign Affairs and Worship

DVM-420-00

San Jose, 28 September 2000

Your Excellency:

I have the honour to address Your Excellency in regard to the following:

On Tuesday 26 September a Costa Rican vessel carrying two judicial agents and a member of the police force were preparing to navigate the San Juan River towards the Caño Rio Jardin area, situated five kilometres from the mouth of the San Carlos River on the southern bank of the San Juan River, in Costa Rican territory. These officials were travelling to this town to undertake tasks related to their post, within the bounds of those permitted by the second article of the Cleveland Award, issued on the twenty second of March, eighteen eighty eight. On arriving at the Nicaraguan army post, located in front of Boca San Carlos they were not allowed to enter the San Juan River.

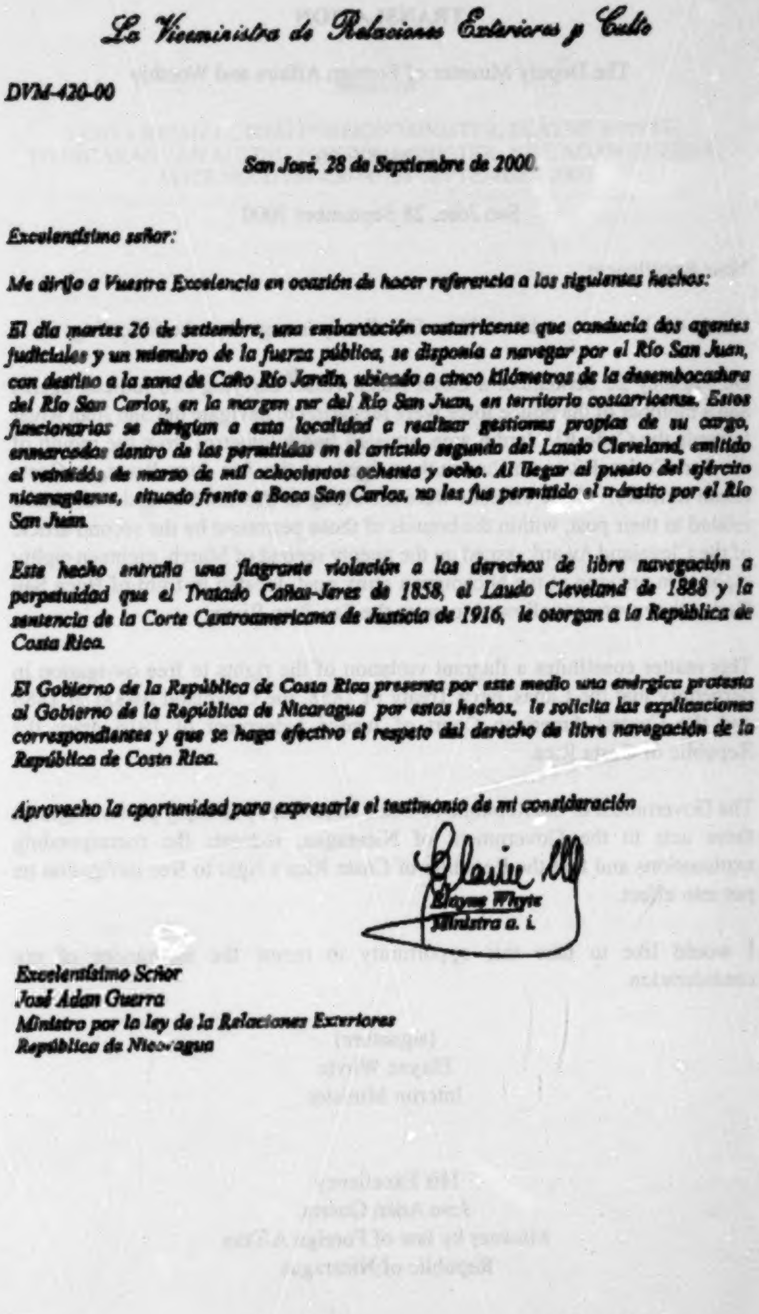
This matter constitutes a flagrant violation of the rights to free navigation in perpetuity that the Cañas-Jerez Treaty of 1858, the Cleveland Award of 1888 and the Central American Court of Justice judgement of 1916 grant the Republic of Costa Rica.

The Government of the Republic of Costa Rica hereby strongly protests against these acts to the Government of Nicaragua, requests the corresponding explanations and that the Republic of Costa Rica's right to free navigation be put into effect.

I would like to take this opportunity to renew the assurances of my consideration.

(signature)
Elayne Whyte
Interim Minister

His Excellency
Jose Adan Guerra
Minister by law of Foreign Affairs
Republic of Nicaragua



La Viceministra de Relaciones Exteriores y Culto

DVM-420-00

San José, 28 de Septiembre de 2000.

Excelentísimo señor:

Me dirijo a Vuestra Excelencia en ocasión de hacer referencia a los siguientes hechos:

El día martes 26 de setiembre, una embarcación costarricense que conducía dos agentes judiciales y un miembro de la fuerza pública, se disponía a navegar por el Río San Juan, con destino a la zona de Caño Río Jardín, ubicado a cinco kilómetros de la desembocadura del Río San Carlos, en la margen sur del Río San Juan, en territorio costarricense. Estos funcionarios se dirigían a esta localidad a realizar gestiones propias de su cargo, enmarcadas dentro de las permitidas en el artículo segundo del Laudo Cleveland, emitido el veintidós de marzo de mil ochocientos ochenta y ocho. Al llegar al puesto del ejército nicaragüense, situado frente a Boca San Carlos, no les fue permitido el tránsito por el Río San Juan.

Este hecho entraña una flagrante violación a los derechos de libre navegación a perpetuidad que el Tratado Cañas-Jerez de 1858, el Laudo Cleveland de 1888 y la sentencia de la Corte Centroamericana de Justicia de 1916, le otorgan a la República de Costa Rica.

El Gobierno de la República de Costa Rica presenta por este medio una enérgica protesta al Gobierno de la República de Nicaragua por estos hechos, le solicita las explicaciones correspondientes y que se haga efectivo el respeto del derecho de libre navegación de la República de Costa Rica.

Aprovecho la oportunidad para expresarle el testimonio de mi consideración

Elayne Whyte
Ministra a. i.

Excelentísimo Señor
José Adan Guerra
Ministro por la ley de la Relaciones Exteriores
República de Nicaragua

Annex 69

NICARAGUAN ACTING FOREIGN MINISTER, JOSÉ ADÁN GUERRA, TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, NOTE NO. MRE/VM-JI/483/10/00, 18 OCTOBER 2000

TRANSLATION

(seal)
Republic of Nicaragua
Central America

Ministry of Foreign Affairs

18 October 2000
MRE/VM-JI/483/10/00

Excellency:

I have the honour to address Your Excellency in reference to our reply MRE/DM/4977/09/00 of 29 September of the current year to your Letter DVM-420-00 of the 28th of the same month and year, in which you were informed of the investigation into the events you referred to in your letter that were being carried out with a view to analyzing if the navigation mentioned on that occasion is covered by that stipulated in the Jerez-Cañas Treaty of 1858 and the Cleveland Award of 1888.

In this respect, I would like to make it known to you that, as a result of the investigations, this Ministry of Foreign Affairs was informed that, on 26 September, members of the Costa Rican Judicial Investigation Organism arrived at the Border Police post on Costa Rican soil from which they sent a message to the Chief of Border Police in Boca San Carlos, Sergeant II Sandoval, asking him to authorize their navigation on the San Juan River and arrival at the area known as La Curaña, where a robbery had taken place, and recommending that the abovementioned Sergeant II present the request to a higher ranking official, since the pertinent authorities had not, at that time, received any request.

I avail myself of this opportunity, Your Excellency, to renew the assurances of my highest consideration,

(signature)
Jose Adan Guerra
Minister by Law

His Excellency
Roberto Rojas Lopez
Minister of Foreign Affairs and Worship
Republic of Costa Rica

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Ministerio de Relaciones Exteriores

18 de octubre de 2000
MRE/VM-JI/483/10/00

Excelencia:

Tengo el agrado de dirigirme a Vuestra Excelencia, en ocasión de hacer referencia a nuestra Nota MRE/DM/4977/09/00 del día 29 de septiembre del año en curso, en respuesta a su Nota DVM-420-00 del 28 del mismo mes y año, en la que se le informaba que se estaban investigando los hechos a los que hace alusión en su comunicación, con la finalidad de analizar si la navegación referida en esa oportunidad, está comprendida dentro de lo establecido en el Tratado Jerez-Cañas de 1858 y el Laudo Cleveland de 1888.

Al respecto, me permito hacer de su conocimiento que como resultado de las investigaciones, esta Cancillería fue informada que el día 26 de septiembre, miembros del Organismo de Investigación Judicial de Costa Rica, llegaron al puesto de Policía de Fronteras en territorio costarricense, desde el cual enviaron mensaje al Jefe de Policía de Fronteras en Boca de San Carlos, Sargento II Sandoval, para que les autorizara navegar por el río San Juan y llegar al lugar conocido como La Curaña, en donde se había realizado un asalto, recomendando el citado Sargento II presentar la solicitud a un nivel superior, no habiendo recibido a la fecha, las autoridades competentes, ninguna solicitud.

Aprovecho la ocasión para reiterar a Vuestra Excelencia las muestras de mi más alta y distinguida consideración.

José Adán [illegible]
Ministro por la Ley

Excelentísimo Señor
Roberto Rojas López
Ministro de Relaciones Exteriores y Culto
República de Costa Rica

Annex 70

COSTA RICAN DEPUTY FOREIGN MINISTER, ELAYNE WHYTE, TO NICARAGUAN FOREIGN MINISTER, FRANCISCO XAVIER AGUIRRE SACASA, NOTE NO. DVM-111-01, 18 APRIL 2001

TRANSLATION

The Deputy Minister of Foreign Affairs and Worship

18 April 2001
DVM-111-01

Your Excellency:

I address Your Excellency on the matter of a fee of US$ 25.00 (twenty five US dollars) that the Nicaraguan authorities charged Costa Ricans travelling along the San Juan River during the past month of March. This illegal charge took place when Costa Ricans were navigating the San Juan River in vessels carrying the national flag. In this respect, we are enclosing one of the receipts issued by the Nicaraguan authorities, which proves the charge of the above-mentioned fee.

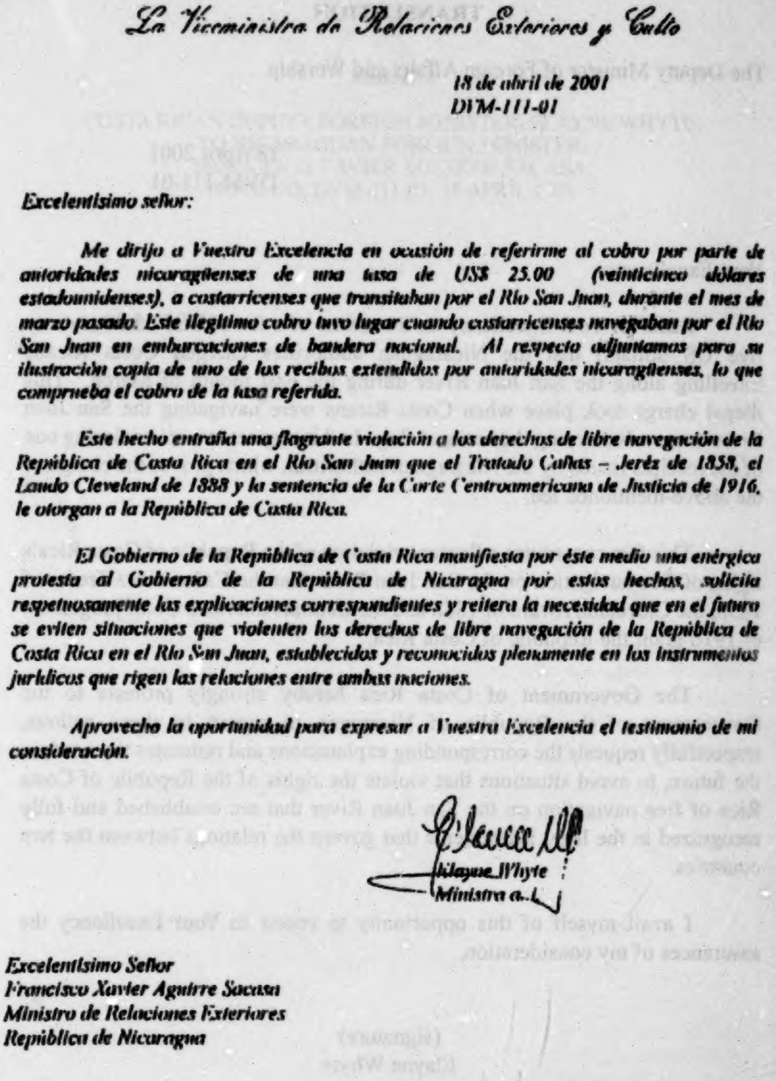
This fact constitutes a flagrant violation of the Republic of Costa Rica's rights of free navigation on the San Juan River that the Cañas-Jerez Treaty of 1858, the Cleveland Award of 1888 and the Central American Court judgement of 1916 grant the Republic of Costa Rica.

The Government of Costa Rica hereby strongly protests to the Government of the Republic of Nicaragua in regard to these actions, respectfully requests the corresponding explanations and reiterates the need, in the future, to avoid situations that violate the rights of the Republic of Costa Rica of free navigation on the San Juan River that are established and fully recognized in the legal instruments that govern the relations between the two countries.

I avail myself of this opportunity to renew to Your Excellency the assurances of my consideration,

(signature)
Elayne Whyte
Interim Minister

His Excellency
Francisco Xavier Aguirre Sacasa
Minister of Foreign Affairs
Republic of Nicaragua



La Viceministra de Relaciones Exteriores y Culto

18 de abril de 2001
DVM-111-01

Excelentísimo señor:

Me dirijo a Vuestra Excelencia en ocasión de referirme al cobro por parte de autoridades nicaragüenses de una tasa de US$ 25.00 (veinticinco dólares estadounidenses), a costarricenses que transitaban por el Río San Juan, durante el mes de marzo pasado. Este ilegítimo cobro tuvo lugar cuando costarricenses navegaban por el Río San Juan en embarcaciones de bandera nacional. Al respecto adjuntamos para su ilustración copia de uno de los recibos extendidos por autoridades nicaragüenses, lo que comprueba el cobro de la tasa referida.

Este hecho entraña una flagrante violación a los derechos de libre navegación de la República de Costa Rica en el Río San Juan que el Tratado Cañas – Jeréz de 1858, el Laudo Cleveland de 1888 y la sentencia de la Corte Centroamericana de Justicia de 1916, le otorgan a la República de Costa Rica.

El Gobierno de la República de Costa Rica manifiesta por éste medio una enérgica protesta al Gobierno de la República de Nicaragua por estos hechos, solicita respetuosamente las explicaciones correspondientes y reitera la necesidad que en el futuro se eviten situaciones que violenten los derechos de libre navegación de la República de Costa Rica en el Río San Juan, establecidos y reconocidos plenamente en los instrumentos jurídicos que rigen las relaciones entre ambas naciones.

Aprovecho la oportunidad para expresar a Vuestra Excelencia el testimonio de mi consideración.

Elayne Whyte
Ministra a.i.

Excelentísimo Señor
Francisco Xavier Aguirre Sacasa
Ministro de Relaciones Exteriores
República de Nicaragua

Annex 71

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ,
TO NICARAGUAN FOREIGN MINISTER,
FRANCISCO XAVIER AGUIRRE SACASA,
NOTE NO. DM-207-2001, 9 MAY 2001

TRANSLATION

The Minister of Foreign Affairs and Worship

9 May 2001
DM-207-2001

Your Excellency:

I am addressing Your Excellency in reference to the sum of US$ 25.00 that Costa Rican vessels navigating the San Juan River are being charged as a so-called departure clearance established by the Nicaraguan authorities.

According to the attestation of deed number twenty two of the Third Volume of the Protocol of Notary Sergio Gerardo Ugalde Godinez of the fifth of May 2001, a copy of which I am enclosing for Your Excellency, the Nicaraguan authorities are charging each Costa Rican vessel navigating the lower course of the San Juan River a tax of US $25.00 and US $5.00 to each Costa Rican travelling in these vessels.

In the abovementioned document Mr. Norman Scott Chinchilla, a Costa Rican merchant, declared that he has to pay the Nicaraguan authorities US$ 5.00 every time he wishes to travel to his farms and engage in commerce.

In this same document, Mr. William Rojas Ugalde, a Costa Rican who is President of the Chamber of Tourism of Sarapiqui, declared that the Nicaraguan authorities charge each Costa Rican vessel that navigates the lower course of the San Juan River $ 25.00, a statement backed up by Mr. Jorge Lao Jarquin who, in addition to having to pay this sum, is obliged by the Nicaraguan authorities to lower the Costa Rican flag on his vessel when he navigates on that waterway.

The deed issued by the Notary Ugalde Godinez mentions what happened to him and Mr. Carlos Alvarado Valverde on a trip along the San Juan River leaving from Puerto Viejo of Sarapiqui, in Costa Rica, to Barra del Colorado, also in Costa Rica, on a return journey.

According to the notarial deed, on leaving the Sarapiqui River and entering the San Juan River the vessel in which Mr. Alvarado and Mr. Ugalde were travelling was required by the Nicaraguan authorities to stop at the Nicaraguan Army border post located on the northern bank of the San Juan River and there they were charged the US$25.00, as can be seen from the enclosed receipts.

Furthermore, they were informed that the vessels had to report there in order for them to be authorized to navigate the river.

At this Nicaraguan border post, despite the fact that the Costa Ricans explained that the purpose of their trip was commercial, the Nicaraguan migration authorities demanded they pay the US$5.00.

The vessel proceeded in the direction of Barra del Colorado and, once more, the Nicaraguan authorities forced them to stop at another border post in Nicaragua, known as The Delta Post, and obtain authorization there for leaving for Costa Rica. On their return journey via the same route, they had to report at the Nicaraguan Army's Delta Post once again. The Nicaraguan authorities once again charged them US$ 25.00 for passing through the San Juan River and, in addition, they were informed they could only navigate the river during the established schedule between 6:00 am and 5:30 pm.

According to the attached deed, the vessel stopped at the Nicaraguan Army Border Post, located at the mouth of the Sarapiqui River, where the receipts issued by the Delta Post were inspected and the departure of the vessel and its crew members from Nicaragua was authorized.

These events, Minister, openly contradict that stipulated in the international instruments currently in force between Costa Rica and Nicaragua.

Article VI of the Cañas-Jerez Treaty establishes that "The Republic of Nicaragua shall have exclusively the dominion and sovereign jurisdiction over the waters of the San Juan river from its origin in the Lake to its mouth in the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation on the said waters, between the said mouth and the point, three English miles distant from Castillo Viejo, said navigation being for the purposes of commerce either with Nicaragua or with the interior of Costa Rica, through the San Carlos river, the Sarapiquí, or any other way proceeding from the portion of the bank of the San Juan river, which is hereby declared to belong to Costa Rica. **The vessels of both countries shall have the power to land indiscriminately on either side of the river at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments"**.(The boldface is not from the original).

These Costa Rican rights were confirmed in 1888 by the Cleveland Award and in 1916 by the Central American Court of Justice.

The Central American Court of Justice established that "Costa Rica has in the San Juan, for purposes of commerce, the permanent rights of free navigation from its mouth up to within three miles of Castillo Viejo; and she may bring her vessels to, on either shore indiscriminately, without its being permissible to charge her any dues in the part where the navigation is common. It is therefore plain that the dominion which the Republic of Nicaragua exercises over the San Juan River is not absolute or unlimited; it is necessarily restricted by the rights of free navigation attached thereto and so remarkably granted to Costa Rica, especially if we consider that such rights, exercised for fiscal and defensive purposes, are confounded in their development, in the opinion of treatise writers, with the sovereign faculties of *imperium*. Such a concession is equivalent to a real right of use, perpetual and inalterable, which places the Republic of Costa Rica in the full enjoyment of the ownership for practical purposes of a large part of the San Juan River, without prejudice to the full ownership which Nicaragua preserves as sovereign of the territory".

As the attached notarial deed demonstrates, firstly, the Costa Rican vessel was illegally charged a tax of US$ 25.00 each way, US $50.00 in total, without any agreement having been made between the Republic of Nicaragua and the Republic of Costa Rica for imposing these payments on Costa Rican vessels that navigate the San Juan River in the part where navigation is common, in accordance with the provisions of the Cañas-Jerez Treaty of 1858, the Cleveland Award of 1888 and the Central American Court of Justice judgement of 1916.

Secondly, the Government of Nicaragua imposed a timetable for the use and navigation on the San Juan River which hinders the free navigation that Costa Rica has on the lower course of the said waterway. This unilateral restriction on Nicaragua's part is inadmissible, given that it is not stipulated by any agreement between the two States.

Thirdly, the occupants of the abovementioned vessel informed the Nicaraguan authorities that the purpose of their journey was the purpose of commerce, but despite this they were charged US$5.00, in violation of article VI of the Cañas-Jerez Treaty.

Fourthly, the fact that the Nicaraguan authorities demand that Costa Rican vessels lower the Costa Rican flag as a requirement for navigating the San Juan River distorts custom and international Law in this respect.

In conclusion, Excellency, the sums charged and the conditions that the Nicaraguan authorities have imposed on the Costa Rican vessels that navigate the lower course of the San Juan River constitute an open violation of the provisions of the Cañas-Jerez Treaty as well as the provisions of the other aforementioned international instruments, and the Government of Costa Rica therefore strongly protests and requests explanations in this regard and that the appropriate measures be taken to avoid these events, that violate Costa Rica's rights to free navigation on the San Juan River, from taking place in the future, since they in no way contribute to the harmonious and fraternal relations that should prevail over our two countries.

The Government of Costa Rica, Minister, has attempted, on repeated occasions, to find a solution, by means of dialogue and negotiation, to the constant problems that have arisen between the two Republics as a result of the restrictions that, since 1998, the Government of Nicaragua has unilaterally imposed on Costa Rica's rights of free navigation on the San Juan River. The Government of Costa Rica, faced with the evident difficulty of resolving these controversies through bilateral channels, once again invites the Nicaraguan Government to jointly consider other methods of International Law, such as mediation or arbitration, for resolving this type of difficulties, and hopes that, in the meantime, it ceases its policy of establishing new restrictions to Costa Rica's rights to the lower course of the San Juan suddenly and without consultation.

I renew the assurances of my consideration,

(signature)
Roberto Rojas

His Excellency
Francisco Xavier Aguirre S.
Minister of Foreign Affairs
Republic of Nicaragua

El Ministro de Relaciones Exteriores y Culto

9 de mayo, 2001
DM-207-2001

Excelentísimo señor:

Me dirijo a Vuestra Excelencia en ocasión de referirme al cobro de US $25.00 a las embarcaciones costarricenses que navegan en el río San Juan, por concepto de un denominado derecho de zarpe establecido por las autoridades nicaragüenses.

Según el testimonio de la escritura número veintidós del Tomo Tercero del Protocolo del Notario Sergio Gerardo Ugalde Godínez de fecha cinco de mayo de 2001, copia del cual adjunto a Vuestra Excelencia, las autoridades nicaragüenses cobran un impuesto de US $25.00 a cada embarcación costarricense que navega en el curso inferior del río San Juan y US $5.00 a cada costarricense que viaja en esas embarcaciones.

En el documento arriba citado, el señor Norman Scott Chinchilla, costarricense, comerciante, declaró que se ve en la obligación de cancelar US$ 5.00 a las autoridades nicaragüenses cada vez que desea llegar a sus fincas y ejercer el comercio.

En esa misma escritura, el señor William Rojas Ugalde, costarricense, Presidente de la Cámara de Turismo de Sarapiquí, declaró que las autoridades nicaragüenses cobran $ 25.00 a cada embarcación costarricense que navega por el curso inferior del río San Juan, afirmación respaldada por el señor Jorge Lao Jarquín, a quien, además del cobro, las autoridades nicaragüenses han obligado a arriar la bandera costarricense de su embarcación cuando navega por esa vía fluvial.

En el acta levantada por el Notario Ugalde Godínez, hace mención de lo que le sucedió al él y al señor Carlos Alvarado Valverde, en un desplazamiento por el río San Juan, partiendo de Puerto Viejo de Sarapiquí,en Costa Rica, con destino a Barra del Colorado, también en territorio de Costa Rica, en un viaje de ida y regreso.

De acuerdo con lo expuesto en el acta, al salir del río Sarapiquí y entrar al río San Juan, la embarcación con los señores Alvarado y Ugalde fue requerida por las autoridades nicaragüenses a detenerse en el puesto fronterizo del Ejército de Nicaragua ubicado en la margen norte del río San Juan y ahí le fueron cobrados los US$25.00, según consta en los comprobantes adjuntos. Además, se les informó que las embarcaciones debían reportarse ahí para recibir autorización para navegar en el río.

En ese puesto fronterizo nicaragüense, pese a que los costarricenses dijeron que el propósito de su viaje era comercial, las autoridades nicaragüenses de migración les exigieron el pago de los US $ 5.00.

La embarcación prosiguió con rumbo a Barra del Colorado, y de nuevo por exigencia de las autoridades nicaragüenses hubo de detenerse en otro puesto fronterizo de Nicaragua, conocido como Puesto El Delta, y obtener allí autorización para salir a territorio costarricense. Al emprender su viaje de regreso por la misma ruta, se vieron obligados a reportarse nuevamente en el Puesto El Delta del Ejército de Nicaragua. Las autoridades nicaragüenses les cobraron nuevamente US$ 25.00 por transitar por el río San Juan, y además les comunicaron que la navegación en el río solo se permitía dentro del horario establecido de 6:00 am hasta las 5:30 pm.

Según la escritura adjunta, la embarcación se detuvo en el Puesto Fronterizo del Ejército de Nicaragua ubicado en la desembocadura del río Sarapiquí, donde inspeccionaron los comprobantes de pago emitidos por el Puesto El Delta y autorizaron la salida de la embarcación y sus tripulantes del territorio de Nicaragua.

Estos hechos, señor Ministro, contradicen de modo flagrante lo dispuesto en los instrumentos internacionales vigentes entre Costa Rica y Nicaragua.

El artículo VI del Tratado Cañas-Jerez establece que "La República de Nicaragua tendrá exclusivamente el dominio y sumo imperio sobre las aguas del río San Juan, desde su salida del lago hasta su desembocadura en el Atlántico; pero la República de Costa Rica tendrá en dichas aguas los derechos perpetuos de libre navegación, desde la expresada desembocadura hasta tres millas inglesas antes de llegar al castillo Viejo, con objetos de comercio, ya sea con Nicaragua o al interior de Costa Rica por los ríos de San Carlos o Sarapiquí o cualquiera otra vía procedente de la parte que en la ribera del San Juan se establece corresponder a esta República. **Las embarcaciones de uno u otro país podrán indistintamente atracar en las riberas del río, en la parte en que la navegación es común, sin cobrarse ninguna clase de impuestos, a no ser que se establezcan de acuerdo entre ambos Gobiernos."** (La negrilla no es del original).

Estos derechos de Costa Rica fueron confirmados en 1888 por el Laudo Cleveland y en 1916 por la Corte de Justicia Centroamericana.

La Corte de Justicia Centroamericana estableció que "Costa Rica tiene en el San Juan, para objetos de comercio, los derechos permanentes de libre navegación, desde su desembocadura hasta tres millas antes de llegar al Castillo Viejo; y podrá atracar sus barcos, en cualquier orilla indistintamente, sin que sea lícito imponerle gravámenes en aquella parte en que la navegación es común. Claro está, que el dominio que la República de Nicaragua ejerce sobre el río San Juan, no es absoluto ni ilimitado, tiene que estar restringido por los derechos de libre navegación y anexos, tan remarcablemente otorgados a Costa Rica, sobre todo si se considera que tales derechos, ejercidos para fines fiscales y defensivos, se confunden en su desarrollo, según el sentir de los tratadistas, con las facultades soberanas del imperium. Tal concesión equivale a un derecho real de uso, perpetuo e inalterable, que coloca a la República de Costa Rica en el goce pleno del dominio útil de gran parte del río San Juan sin perjuicio del dominio pleno que conserva Nicaragua como soberana del territorio."

Como se desprende de lo expuesto en el testimonio notarial aportado, primero, se cobró a la embarcación costarricense, de manera ilícita, un impuesto de US $25.00 de ida y otro tanto de vuelta, para un total de US $50.00, sin que nunca haya mediado acuerdo entre la República de Nicaragua y la República de Costa Rica para imponer tales cargas a las embarcaciones costarricenses que naveguen por el río San Juan en la parte en que la navegación es común, según lo disponen el Tratado Cañas-Jeréz de 1858, el laudo Cleveland de 1888 y la Corte de Justicia Centroamericana de 1916.

En segundo lugar, el Gobierno de Nicaragua impuso un horario de uso y navegación en el río San Juan que obstaculiza la libre navegación que posee Costa Rica en el curso inferior de dicha vía fluvial. Esta restricción unilateral de parte de Nicaragua es improcedente, dado que no la establece ningún convenio entre ambos Estados.

Tercero, los ocupantes de la embarcación mencionada indicaron a las autoridades nicaragüenses que el propósito de su viaje era con objetos de comercio, pese a lo cual se les cobraron US $5.00, en violación del artículo VI del Tratado Cañas-Jerez.

Cuarto, la exigencia de las autoridades nicaragüenses de que las naves costarricenses han de arriar la bandera de Costa Rica como requisito para la navegación en el río San Juan, violentan la costumbre y el Derecho internacional al respecto.

Excelencia, en conclusión, los cobros y condiciones que han establecido las autoridades nicaragüenses a las embarcaciones de Costa Rica que navegan en el curso inferior del río San Juan, entrañan una flagrante violación a las disposiciones del tratado Cañas-Jerez y a las disposiciones de los demás instrumentos internacionales antes mencionados, por lo que el Gobierno de Costa Rica presenta su más enérgica protesta, solicita que se le den las explicaciones del caso y que se tomen las medidas pertinentes para que en lo sucesivo se eviten situaciones que violenten los derechos de libre navegación de Costa Rica en el río San Juan que en nada contribuyen a las relaciones armoniosas y de hermandad que deben imperar entre nuestros dos países.

El Gobierno de Costa Rica, señor Ministro, ha procurado en formas reiterada encontrar solución mediante el diálogo y la negociación a los repetidos problemas que han surgido entre ambas Repúblicas como consecuencia de las restricciones que desde 1998 ha impuesto unilateralmente el Gobierno de Nicaragua a los derechos de libre navegación de Costa Rica en el río San Juan. El Gobierno de Costa Rica, ante la dificultad evidente de resolver estas diferencias por la vía bilateral, invita nuevamente al Gobierno de Nicaragua a

El Ministro de Relaciones Exteriores y Culto

recurrir conjuntamente a los otros mecanismos que ofrece el Derecho Internacional para resolver este tipo de dificultades, tales como la mediación o el arbitraje, y espera que entre tanto se llega a esa solución, cese en su política de establecer de modo súbito e inconsulto nuevas restricciones a los derechos que Costa Rica tiene en el curso inferior del San Juan.

Le reitero el testimonio de mi consideración,

Roberto Rojas

Excelentísimo Señor
Francisco Xavier Aguirre S.
Ministro de Relaciones Exteriores
República de Nicaragua

Annex 72

NICARAGUAN FOREIGN MINISTER, FRANCISCO XAVIER AGUIRRE SACASA, TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, NOTE NO. MRE/DM-JI/0818/08/01, 3 AUGUST 2001

TRANSLATION

(seal)
Republic of Nicaragua
Central America

The Minister of Foreign Affairs

Managua, 3 August 2001
MRE/DM-JI/0818/08/01

Excellency:

I have the honour to address Your Excellency in reference to your letters DVM-111-01 of 18 April and DM-207-2001of 9 May, both of the current year, in which the Honourable Government of the Republic of Costa Rica protests the fact that Costa Rican registered vessels navigating the San Juan River are being charged to do so.

In this respect, I would like to reiterate, Your Excellency, that the Government of the Republic of Nicaragua faithfully complies with its international obligations, and, consequently, with regard to the case at hand, is respectful of the rights of navigation *con objetos de comercio* granted to Costa Rica on the lower course of the San Juan river under the Jerez-Cañas Treaty and the Cleveland Award.

With regard to the motive for your protest, I would like to inform you that the sum of US$ 25.00 being charged is, contrary to that expressed by Your Excellency, not for navigating the San Juan River, nor does it constitute any type of tax, but is, rather, the amount charged for providing the departure clearance certificate service that both Nicaraguan and foreign vessels in any Nicaraguan port, including those located in the said river, are charged when travelling to another State.

His Excellency
Mr. Roberto Rojas
Minister of Foreign Affairs and Worship
Republic of Costa Rica

Page No. 2
3 August 2001

I have the honour to inform you, dear Minister, that, in the interests of strengthening the fraternal ties of friendship and cooperation that exist between our countries and Governments, the President of the Republic has given instructions to extend the departure clearance certificate to Costa Rican vessels for free in Boca de Sarapiqui and the Delta of the San Juan River, as an act of courtesy, with the exception of vessels related to tourist activities or when they use the Port of San Juan del Norte. The vessels that receive the complementary departure clearance certificate will only be required to report at the Nicaraguan Army's Military Control Posts on the lower course of the San Juan River.

In regard to the Illustrious Costa Rican Government's dissatisfaction with respect to the Nicaraguan authorities' requirement that Costa Rican vessels have to lower their country's flag in order to navigate the San Juan River, allow me, Your Excellency, to express the fact that, as regards international maritime navigation, every ship entering the sovereign waters of another State raises the flag of that State, in keeping with international custom and courtesy, so that the latter is hoisted higher than that of the vessel's national flag. This act is considered one of respect and recognition of the exercise of sovereignty on the said waters. If the vessel does not hoist the flag of the State in whose waters it finds itself, it may not raise its national flag.

In relation to the limitation on the navigation on the San Juan River as regards the hours of the day, it should be noted that it is Nicaragua's right and obligation, as the sovereign State, to adopt the regulations necessary for guaranteeing the safety of the people and vessels travelling along the river and avoid all manner of criminal activities.

Finally, with regard to the US$ 5.00 the migration authorities charge each person entering Nicaraguan territory; allow me to inform you that the latter amount applies to all foreigners entering the country.

As Your Excellency can see, the Government of the Republic of Nicaragua faithfully complies with its international obligations and the actions carried out are implemented in strict adherence to custom and international law and to Nicaraguan Positive Law.

I avail myself of this opportunity, Your Excellency, to renew the assurances of my highest and most distinguished consideration.

(signature)
Francisco X. Aguirre Sacasa

(seal)
Ministry of Foreign Affairs
Managua
Republic of Nicaragua
Central America

El Ministro de Relaciones Exteriores

Managua, 3 de agosto del 2001
MRE/DM-JI/0818/08/01

Excelencia:

Tengo el agrado de dirigirme a Vuestra Excelencia en ocasión de hacer referencia a Notas DVM-111-01 del 18 de abril y DM-207-2001 del 9 de mayo, ambas del año en curso, en las que el Ilustrado Gobierno de la República de Costa Rica presenta su protesta por el cobro realizado en el río San Juan a embarcaciones con matrícula de la República de Costa Rica.

Al respecto, me permito reiterar a Vuestra Excelencia que el Gobierno de la República de Nicaragua es fiel cumplidor de sus obligaciones internacionales, y en consecuencia en relación al caso que nos ocupa, es respetuoso de los derechos de navegación con objetos de comercio concedidos a Costa Rica en el curso inferior del río San Juan por el Tratado Jerez-Cañas y el Laudo Cleveland.

En relación al motivo de su protesta, me permito manifestarle que el cobro de US$ 25.00, contrario a lo que manifiesta Vuestra Excelencia, no es por la navegación en el río San Juan, ni constituye ningún tipo de carga impositiva, sino por la prestación del servicio del derecho de zarpe, el cual se cobra a aquellas embarcaciones, tanto nicaragüenses como extranjeras, que estando en cualquier puerto nicaragüense, incluyendo los ubicados en el citado río, se dirigen a otro Estado.

Su Excelencia
Señor Roberto Rojas
Ministro de Relaciones Exteriores y Culto
República de Costa Rica

Me honra informarle Señor Ministro, que en aras de fortalecer las fraternales relaciones de amistad y cooperación que existen entre nuestros pueblos y Gobiernos, el Señor Presidente de la República ha girado instrucciones de extender gratuitamente a las embarcaciones costarricenses, como una cortesía, el derecho de zarpe en Boca de Sarapiquí y el Delta del Río San Juan, exceptuando aquellas dedicadas a actividades turísticas o cuando utilicen el Puerto de San Juan del Norte. Las embarcaciones que reciben el zarpe de cortesía solamente deberán reportarse en los Puestos de Control Militar que el Ejército de Nicaragua mantiene en el curso inferior del río San Juan.

En cuanto a la inconformidad del Ilustrado Gobierno de Costa Rica sobre la exigencia de las autoridades nicaragüenses de que las naves costarricenses han de arriar la bandera de su país como requisito para la navegación en el río San Juan, me permito manifestar a Vuestra Excelencia que en materia de navegación marítima internacional, todo barco, una vez que ingresa a las aguas soberanas de otro Estado, por costumbre y cortesía internacional, enarbola la bandera de ese Estado, sobresaliendo ésta por encima del pabellón nacional de la embarcación. Este acto es considerado de respeto y reconocimiento al ejercicio de la soberanía sobre dichas aguas. Si la embarcación no enarbola la bandera del Estado en cuyas aguas se encuentra, no puede enarbolar su bandera nacional.

En lo relativo a la limitación de la navegación en el río San Juan a las horas del día, conviene destacar que Nicaragua como Estado soberano está en el derecho y obligación de adoptar las regulaciones que sean necesarias para garantizar la seguridad de las personas y embarcaciones que transitan en el río y èvitar todo tipo de actividades delictivas.

Finalmente, sobre el cobro que hacen autoridades migratorias de US$ 5.00 por cada persona que ingresa a territorio nicaragüense, me permito informarle que éste se aplica a toda persona de nacionalidad extranjera que ingresa al país.

El Ministro de Relaciones Exteriores

Página No.3
3 de agosto del 2001

Como podrá observar Vuestra Excelencia, el Gobierno de la República de Nicaragua es fiel cumplidor de sus obligaciones internacionales y las acciones que lleva a cabo se implementan con estricto apego al derecho y la costumbre internacional y al Derecho Positivo nicaragüense.

Aprovecho la ocasión para reiterar a Vuestra Excelencia las muestras de mi más alta y distinguida consideración.

Francisco X. Aguirre Sacasa

Annex 73

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ,
TO NICARAGUAN FOREIGN MINISTER,
FRANCISCO XAVIER AGUIRRE SACASA,
NOTE NO. DM-355-2001, 26 SEPTEMBER 2001

TRANSLATION

The Minister of Foreign Affairs and Worship

26 September 2001
DM-355-2001

Your Excellency:

I have the honour to address Your Excellency on the matter of your letter MRE/DM-II/0818/01 of 3 August 2001.

Firstly, it is very satisfactory to read, on Your Excellency's part, of the Illustrious Government of Nicaragua's willingness to comply with its international obligations. This leads one to hope that the Illustrious Government of Nicaragua shall, at all time, respect the international instruments that govern the relations between the countries. Among these instruments is the Central American Court of Justice judgement of 30 September 1916. In this respect, it provides the following ruling:

"a) The Republic of Nicaragua has exclusively the dominion and supreme control over the San Juan River throughout the extent of its course; that is to say, it exercises the rights of ownership over it and it forms a part of the national territory subject to its sovereignty. b) That right is not absolute and suffers the restrictions which the aforesaid Treaty points out: 1- San Juan del Norte and Salinas bays are common to the two Republics; and, consequently, at both terminal points of a possible canal, the legal principle of joint ownership endures; 2- Costa Rica, equally with Nicaragua, is obliged to guard and defend the river in case of foreign aggression, this stipulation demonstrating to what extent, in the mind of the negotiators, the moral and material interests of both people were bound up together; 3- Costa Rica has in the San Juan, for purposes of commerce, the permanent rights of free navigation from its mouth up to within three miles of Castillo Viejo; and she may bring her vessels to, on either shore indiscriminately, without its being permissible to charge her any dues in the part where the navigation is common. It is therefore plain that the dominion which the Republic of Nicaragua exercises over the San Juan River is not absolute or unlimited; it is necessarily restricted by the rights of free navigation attached thereto and so remarkably granted to Costa Rica, especially if we consider that such rights, exercised for fiscal and defensive purposes, are confounded in their development, in the opinion of treatise writers, with the sovereign faculties of *imperium*. Such a concession is equivalent to a real right of use, perpetual and inalterable, which places the Republic of Costa Rica in the full enjoyment of the ownership for practical purposes of a large part of the San Juan River, without prejudice to the full ownership which Nicaragua preserves as Sovereign of the territory" (The boldface is not in the original).

Secondly, the difference should be established between Costa Rican vessels heading specifically for Nicaraguan territory and Costa Rican vessels that have to call at a Nicaraguan port in order to comply with the requirement imposed by the Nicaraguan authorities of reporting to them. In the latter case, the departure clearance certificate is illogical, since these vessels are travelling between points in Costa Rican territory. In short, the Nicaraguan authorities deliberately impose a condition to report, which represents an economic advantage. Such measure totally violates the corresponding provisions of the Cañas-Jerez Treaty.

Thirdly, it is pleasing to hear the Honourable Government of Nicaragua's declarations of good will. We hope that this good will shall contribute to correctly interpreting the provisions of the Cañas-Jerez Treaty, that, in its article 6, at the part that corresponds, establishes: "…The vessels of both countries shall have the power to land indiscriminately on either side of the river at the portion thereof where the navigation is common; and no charges of any kind, or duties, shall be collected unless when levied by mutual consent of both Governments." This aspect is related to that of the previous point in the sense that one may pose the question: "Which is the service rendered corresponding to the departure clearance certificate?"

Fourthly: Neither does my Government understand the explanations for the motives by which the Government of Nicaragua limits the Costa Rican vessels' navigation on the San Juan River. These acts openly contradict that stipulated by the Central American Court: **"Such a concession is equivalent to a real right of use, perpetual and inalterable, which places the Republic of Costa Rica in the full enjoyment of the ownership for practical purposes of a large part of the San Juan River, without prejudice to the full ownership which Nicaragua preserves as sovereign of the territory."** (The boldface is not part of the original).

Fifth: This attitude reflects the effects of the Government of Nicaragua's disregard for the Central American Court of Justice judgement of 30 September 1919 (sic). It is worth remembering, once again, that the judgements of the Central American Court of Justice have been taken into account by the International Court of Justice. This statement is supported by the judgement of that High Court of 11 September 1992 in the El Salvador/Honduras case, in which Nicaragua intervened.

Sixth: Your Excellency states: "…as regards international maritime navigation, every ship entering the sovereign waters of another State raises the flag of that State, in keeping with international custom and courtesy, so that the latter is hoisted higher than that of the vessel's national flag." Your Excellency add: "This act is considered one of respect and recognition of the exercising of sovereignty on the said waters. If the vessel does not hoist the flag of the State in whose waters it finds itself, it may not raise its national flag".

In this regard, with all due respect, Your Excellency, I must point out that, although there are rules of international courtesy–not binding, therefore – that recommend the flag of the country being visited be hoisted next to the ship's flag, this is only applicable in the case of State, police or military vessels. It does not apply to private vessels. Furthermore, the differences once more arise in regard to the Central American Court of Justice judgement of 1916, which establishes the "**full enjoyment of the ownership for practical purposes of a large part of the San Juan River**…" It should be taken into consideration that, due to that legal status of the river, since the circumstances are that of river and not maritime navigation and due to the non-existence of internationally binding regulations, the Nicaraguan authorities cannot demand of Costa Rican vessels that they lower their Costa Rican flag, nor that they raise the flag of that sister country, on navigating the San Juan River.

Seventh: The fact that the Nicaraguan authorities have established a schedule also contravenes the free navigation and, as a result, goes against what is stipulated. Nicaragua cannot establish these limitations unilaterally since none of the instruments currently in force between the two countries establishes that it may do so.

Eighth: A similar situation arises in relation to the five dollar charge. This infringes upon Costa Rica's right to free navigation. This regulation should not be applied to the lower course of the San Juan River. The mention of the case of vessels that are obliged to call at Nicaraguan ports to comply with the requirement of reporting is also valid here. Consequently, on charging this sum, the Nicaraguan authorities do not respect the rights of Costa Rica and, once again, the provisions of the instruments currently in force are violated.

As Your Excellency may gather from the above, we do have different views on the fulfilment of the provisions of the instruments currently in force between Costa Rica and Nicaragua as regards the navigation on the San Juan River.

However, I trust that, despite the differences, we may dialogue in greater depth in the search for adequate solutions.

I avail myself of this opportunity, Your Excellency, to renew once again the assurances of my highest consideration.

(signature)
Roberto Rojas

HIS EXCELLENCY
FRANCISCO X. AGUIRRE SACASA
MINISTER OF FOREIGN AFFAIRS
REPUBLIC OF NICARAGUA

El Ministro de Relaciones Exteriores y Culto

26 de setiembre del 2001
DM 355-2001

Excelentísimo Señor:

Tengo el agrado de dirigirme a Vuestra Excelencia, en ocasión de referirme a su a Nota MRE/DM-II/0818/01, del 3 de agosto del 2001.

Primero: Es muy satisfactorio leer de parte de Su Excelencia la vocación del Ilustrado Gobierno de Nicaragua por cumplir con sus obligaciones internacionales. Esto conduce a esperar que el Ilustrado Gobierno de Nicaragua, respete en todo momento, los instrumentos internacionales que rigen las relaciones entre los países. Entre esos instrumentos, se encuentra la Sentencia de la Corte de Justicia Centroamericana, del treinta de setiembre de mil novecientos dieciséis. En lo que corresponde, dispone esa sentencia:

"a) La República de Nicaragua tiene exclusivamente el dominio y sumo imperio sobre el río San Juan en toda la extensión de su curso. Es decir, ejerce sobre él los derechos de propiedad y forma parte del territorio nacional sujeto a su soberanía. b) Ese derecho no es absoluto y sufre las restricciones del propio Tratado señala: 1- La Bahía de San Juan del Norte y la de Salinas son comunes a las dos Repúblicas; y en consecuencia, en ambos puntos terminales de un posible canal, perdura el principio jurídico de la copropiedad: 2 - Costa Rica al igual que Nicaragua está obligada a la guarda del río y a su defensa en caso de agresión exterior; estipulación que demuestra cuán solidarizados estaban ante el criterio de los negociadores los intereses morales y materiales de ambos pueblos; y 3 – Costa Rica tiene en el San Juan, para los objetos de comercio, los derechos permanentes de libre navegación, desde su desembocadura hasta tres millas antes de llegar al Castillo Viejo; y podrá atracar sus barcos, en cualquier orilla indistintamente, sin que sea lícito imponerle gravámenes en aquella parte en que la navegación es común. Claro está pues, que el dominio que la República de Nicaragua ejerce en el río San Juan, no es absoluto ni ilimitado; tiene que estar restringido por los derechos de libre navegación y anexos, tan remarcablemente otorgados a Costa Rica, sobre todo si se considera que tales derechos, ejercidos para fines fiscales y defensivos, se confunden en su desarrollo, según el sentir de los tratadistas, con las facultades soberanas del *imperium*. Tal concesión equivale a un derecho real de uso, perpetuo e inalterable, que coloca a la República de Costa Rica en el goce pleno del dominio útil de gran parte del río San

Juan, perjuicio del dominio pleno que conserva Nicaragua como Soberana del territorio " (Las negritas no están en el original)

Segundo: Debe tenerse presente la diferencia entre embarcaciones costarricenses que se dirigen expresamente a territorio nicaragüense, y las embarcaciones costarricenses que deben tocar puerto nicaragüense para cumplir con el requisito de reportarse que han impuesto las autoridades nicaragüenses. En ese último caso, el derecho de zarpe no tiene ninguna razón de ser, porque esas embarcaciones se desplazan entre puntos del territorio costarricense. En resumen, las autoridades nicaragüenses imponen ex profeso una condición de reportarse, que les significa un beneficio económico. Tal medida viola absolutamente las disposiciones correspondientes del Tratado Cañas – Jerez.

Tercero: Es grato escuchar las manifestaciones de la buena voluntad del Ilustrado Gobierno de Nicaragua. Abrigamos la esperanza de que esa buena voluntad coadyuve a interpretar correctamente las disposiciones del Tratado Cañas Jerez, que en su artículo 6), en la parte que corresponde, establece: "…Las embarcaciones de uno ù otro país podrán indistintamente atracar en las riberas del río en la parte en que la navegación es común, sin cobrarse ninguna clase de impuestos; á no ser que se establezcan de acuerdo entre ambos Gobiernos". Este aspecto, tiene relación con lo expuesto en el punto anterior, en el sentido de que cabe la pregunta: ¿ cuál es " la prestación del servicio del derecho de zarpe" ?

Cuarto: Tampoco comprende mi Gobierno, las explicaciones sobre los motivos por los cuales el Gobierno de Nicaragua limita la navegación en el río San Juan a las embarcaciones costarricenses. Esa forma de actuar, contraría abiertamente lo resuelto por la Corte de Justicia Centroamericana: **"Tal concesión equivale a un derecho real de uso, perpetuo e inalterable, que coloca a la República de Costa Rica en el goce pleno del dominio útil de gran parte del río San Juan sin perjuicio del dominio pleno que conserva Nicaragua como soberana del territorio".** (Las negritas no se encuentran en el original).

Quinto: Esa actitud, refleja los efectos del desconocimiento por parte del Gobierno del Nicaragua de la Sentencia de la Corte de Justicia Centroamericana del 30 de setiembre de 1919. Es oportuno recordar una vez más que las sentencias de la Corte de Justicia Centroamericana, han sido tomadas en consideración por la Corte Internacional de Justicia. Respalda esta afirmación, la Sentencia de ese Alto Tribunal del 11 de setiembre de 1992, en el caso El Salvador/Honduras, en el que Nicaragua intervino.

Sexto: Afirma Vuestra Excelencia: "... en materia de navegación marítima internacional, todo barco, una vez que ingresa a las aguas soberanas de otro Estado, por costumbre y cortesía internacional, enarbola la bandera de ese Estado, sobresaliendo ésta por encima del pabellón nacional de la embarcación". Agrega Vuestra Excelencia: "Este acto es considerado de respeto y reconocimiento al ejercicio de la soberanía sobre dichas aguas. Si la embarcación no enarbola la bandera del Estado en cuyas aguas se encuentra, no puede enarbolar su bandera nacional "

Al respecto, con el debido respeto, manifiesto a Vuestra Excelencia que si bien existen las normas de cortesía internacional – por lo tanto, no vinculantes – que recomiendan enarbolar el pabellón del país visitado a la par del pabellón de la nave, es sólo aplicable al caso de buques de Estado, policiales o militares. No están comprendidas las embarcaciones privadas. Además, vuelven a presentarse de nuevo las diferencias sobre la Sentencia de la Corte de Justicia Centroamericana de 1916, la cual establece el **"goce pleno del dominio útil de gran parte del río San Juan..."**. Sea oportuno considerar que por el hecho de ese status jurídico del río, por la circunstancia de que es navegación fluvial y no marítima y por la inexistencia de normas internacionales vinculantes, no es exigible por parte de las autoridades nicaragüenses a las embarcaciones costarricenses, arriar el pabellón costarricense, ni izar el pabellón de ese hermano país, al navegar en el río San Juan.

Sétimo: El establecimiento de horarios por parte de las autoridades nicaragüenses, atenta también contra la libre navegación y en consecuencia va en contra de lo establecido. Nicaragua no puede determinar esas limitaciones unilateralmente ninguno de los instrumentos vigentes entre los dos países establece esa facultad.

Octavo: Otro tanto sucede con el cobro de los cinco dólares. Su exigencia, atenta contra la libre navegación, a la que tiene derecho Costa Rica. Esta disposición no debe ser aplicable en el curso inferior del río San Juan. Aquí es válido también lo expuesto en relación con el caso de las embarcaciones que son obligadas a tocar puesto nicaragüense para cumplir con el requisito de reportarse. En consecuencia, al realizar el cobro, las autoridades nicaragüenses no respetan los derechos de Costa Rica y se atenta, una vez más, contra las disposiciones de los instrumentos vigentes.

Por lo expuesto, podrá concluir Vuestra Excelencia, que tenemos percepciones diferentes sobre el cumplimiento de las disposiciones de los instrumentos vigentes entre Costa Rica y Nicaragua, en relación con la navegación en el río San Juan.

El Ministro de Relaciones Exteriores y Culto

Sin embargo, confío que aún en las diferencias, podamos profundizar el diálogo en búsqueda de soluciones adecuadas.

Sea propicia la ocasión, una vez más, para reiterar a Vuestra Excelencia, las manifestaciones de mi más distinguida consideración.

Roberto Rojas

SU EXCELENCIA
FRANCISCO X. AGUIRRE SACASA
MINISTRO DE RELACIONES EXTERIORES
REPÚBLICA DE NICARAGUA

Annex 74

COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, TO NICARAGUAN FOREIGN MINISTER, NORMAN CALDERA CARDENAL, NOTE NO. DM-030-2002, 11 MARCH 2002

TRANSLATION

The Minister of Foreign Affairs and Worship

11 March 2002
DM-030-2002

Your Excellency:

I have the honour to address you to present the following initiative, with the aim of following up on the conversation between His Excellency the President of Nicaragua, Ing. Enrique Bolaños Geyer and the President of Costa Rica, Dr. Miguel Angel Rodriguez Echeverria, on Wednesday 27 February 2002 in Managua, Nicaragua.

As you know, Minister, several meetings have been held, on Costa Rica's initiative, with the aim of finding an adequate solution to the dispute that arose due to the measure taken on 14 July 1998 by the Nicaraguan Army that unilaterally prohibited the navigation of Costa Rican vessels transporting members of the police force carrying their service arms. Between these meetings, and previous to those subsequently held by the Ministers of Foreign Affairs, one was held at the level of Deputy Ministers of Foreign Affairs in Managua with the participation of the OAS official, Dr. Camilo Granada, Assistant to Dr. Cesar Gaviria, Secretary General of the regional Organization. Later on, other conversations were promoted at the level of Deputy Ministers, which did not produce the expected results. For this reason, the established plan to continue meetings at the level of the Ministers of Foreign Affairs was followed up on. The first of these meetings was held in Managua on 15 March 2000, with the participation of the Secretary General of the OAS, Dr. Cesar Gaviria. The second of these meetings, also including the presence of the Secretary General of the OAS, was held in San Jose on 3 April 2000. The differences were not overcome.

In these circumstances, and with the determination to comply with what was agreed at that last meeting, in the sense to seek other procedures that may allow the dispute to be settled, I sent a letter to the Minister of Foreign Affairs, Lic. Eduardo Montealegre, on 10 April 2000 in which I formally proposed to the Government of Nicaragua that both countries request the "mediation of an Illustrious Government of an American State to attempt to find an acceptable solution to the dispute." The Minister of Foreign Affairs Montealegre declared that his country would consider the proposal at length. This effort was not successful either.

In the "Declaration of the Central American Republics and Spain", of 24 November 2001 in Lima, Peru, "the Presidents of the Republic of Costa Rica, the Republic of El Salvador, the Republic of Guatemala, the Republic of Nicaragua, the Republic of Panama, the President of the Government of Spain and the Vice-President of the Republic of Honduras, at a meeting in the presence of H.M. the King of Spain," agreed: "To do everything necessary, in accordance with the principle of legality, to resolve any controversy and, in particular, territorial disputes, by means of intense and discrete talks between the Presidents of the countries concerned, with the support of Spain where appropriate, and with special emphasis on social communications media."

Consequently, in a renewed effort that reflects the prevailing conciliatory spirit of this moment in the relations between our two countries, I would like to propose, Minister, that the Governments of Nicaragua and Costa Rica, by mutual agreement and subject to the relevant consultation, request the good offices of H.M. the King of Spain for finding an adequate solution to this controversy regarding the navigation on the San Juan River of the Costa Rican police force carrying their service arms.

The Government of Costa Rica sincerely hopes for a positive response on the part of the Illustrious Government of Nicaragua.

I avail myself of this opportunity, Your Excellency, to renew the assurances of my highest consideration.

(signature)
Roberto Rojas

His Excellency
Norman Caldera
Minister of Foreign Affairs
Managua, Nicaragua

El Ministro de Relaciones Exteriores y Culto

11 de marzo del 2002
DM-030-2002

Excelentísimo señor:

Tengo el agrado de dirigirme a Ud. para presentarle la siguiente iniciativa, de manera que se le pueda dar seguimiento a lo conversado por el Excelentísimo señor Presidente de Nicaragua, Ing. Enrique Bolaños Geyer y el señor Presidente de Costa Rica, Dr. Miguel Ángel Rodríguez Echeverría, el miércoles 27 de febrero del 2002, en Managua, Nicaragua.

Como es del conocimiento del señor Ministro, por iniciativa de Costa Rica, se han realizado múltiples reuniones con el objeto de buscar una solución adecuada al diferendo que originó la medida tomada el 14 de julio de 1998, por el Ejército de Nicaragua, que prohibió unilateralmente, la navegación de embarcaciones costarricenses que transportaban a miembros de la fuerza pública que portaban sus armas de reglamento. Entre esos encuentros, previo a los que posteriormente sostendrían los Cancilleres, se convocó uno a nivel de Viceministros de Relaciones Exteriores, en Managua, con la participación del funcionario de la OEA, Dr. Camilo Granada, Asistente del Dr. César Gaviria, Secretario General de la Organización regional. Posteriormente, se promovieron otras conversaciones a nivel de Viceministros, que no rindieron los frutos esperados. Por tal motivo, se le dio seguimiento al plan establecido de continuar con reuniones a nivel de Ministros de Relaciones Exteriores. El primero de esos encuentros se celebró en Managua, el 15 de marzo de 2000, con la participación del señor Secretario General de la OEA, Dr. César Gaviria. La segunda de esas reuniones, siempre con la presencia del señor Secretario General de la OEA, tuvo lugar en San José, el 3 de abril de 2000. Las diferencias no fueron superadas.

En esas circunstancias, y con la determinación de cumplir con lo acordado en esa última reunión, de buscar otros procedimientos que permitieran solucionar el diferendo, con fecha 10 de abril de 2000, dirigí una nota al señor Ministro de Relaciones Exteriores,

Lic. Eduardo Montealegre, en la que proponía formalmente al Gobierno de Nicaragua que ambos países solicitaran la "la mediación de algún Ilustrado Gobierno de un Estado americano para tratar de hallar una solución aceptable del diferendo". El Canciller Montealegre manifestó que su país consideraría detenidamente la propuesta. Esta gestión tampoco tuvo éxito.

En la "Declaración de la Repúblicas Centroamericanas y de España", de 24 de noviembre de 2001 en Lima Perú, "reunidos, en presencia de S.M. el Rey de España, los Presidentes de la República de Costa Rica, de la República de El Salvador, de la República de Guatemala, de la República de Nicaragua, de la República de Panamá, el Presidente del Gobierno de España y el Vicepresidente de la República de Honduras", acordaron : "Hacer todo lo necesario, conforme con el principio de legalidad para resolver cualesquiera controversias y, en particular, las disputas territoriales, a través de un diálogo intenso y discreto entre los Presidentes de los países concernidos, con el apoyo de España en su caso, y con especial atención a los medios de comunicación social".

En consecuencia, en un nuevo intento que recoge el espíritu conciliador imperante en este momento en las relaciones de nuestros dos países, me permito proponer al señor Ministro que los Gobiernos de Nicaragua y de Costa Rica, de común acuerdo, y previas las consultas pertinentes, soliciten los buenos oficios de S.M. el Rey de España para encontrar una solución adecuada a esta controversia sobre la navegación en el río San Juan de la fuerza pública costarricense con sus armas de reglamento.

El Ministro de Relaciones Exteriores y Culto

Sea válida la ocasión para reiterar a Vuestra Excelencia, el testimonio mi distinguida consideración.

Roberto Rojas

A Su Excelencia
Norman Caldera
Ministro de Relaciones Exteriores
Managua, Nicaragua

Annex 75

NICARAGUAN FOREIGN MINISTER, NORMAN CALDERA CARDENAL, TO COSTA RICAN FOREIGN MINISTER, ROBERTO ROJAS LÓPEZ, NOTE NO. MRE/DM-JI/481/04/02, 23 APRIL 2002

TRANSLATION

The Minister of Foreign Affairs

Managua, 23 April 2002
MRE/DM-JI/481/04/02

Excellency:

I have the honour to acknowledge receipt of your kind letter DM/030/2002 of past 11 March regarding the interest of Costa Rica in relieving and provisioning the personnel at their border posts along the San Juan River.

Firstly, Excellency, I feel obliged to comment on the statement contained in this letter to the effect that this situation arose due to the "measure taken on 14 July 1998 by the Nicaraguan Army that unilaterally prohibited the navigation of Costa Rican vessels transporting members of the police force carrying their service arms." In this respect, the truth is that at no time either prior to or following the abovementioned date has the Republic of Nicaragua recognized any rights of navigation other than those enunciated in the Jerez-Cañas Treaty and the Cleveland Award, the provisions of which we must strictly adhere to.

I shall not insist on this historical fact and shall, rather, refer to the fact that Nicaragua is more than willing to explore resolution efforts, the most recent, as Your Excellency mentioned, being the meeting between the Presidents of Nicaragua and Costa Rica on 27 February of the current year in this city of Managua.

It is an honour for me to inform Your Excellency that my Government, in the interests of strengthening our ties of friendship and cooperation, believes in promoting meetings with a broad agenda including matters that are of interest to both countries and characteristic of our close relations as neighbours and the will to reach higher levels of development and prosperity. In that sense, the President of Nicaragua considers that by means of frank and direct dialogue between the Ministries of Foreign Affairs, with the advice of other State institutions, we may find solutions to the matters that are of interest to our peoples and Governments.

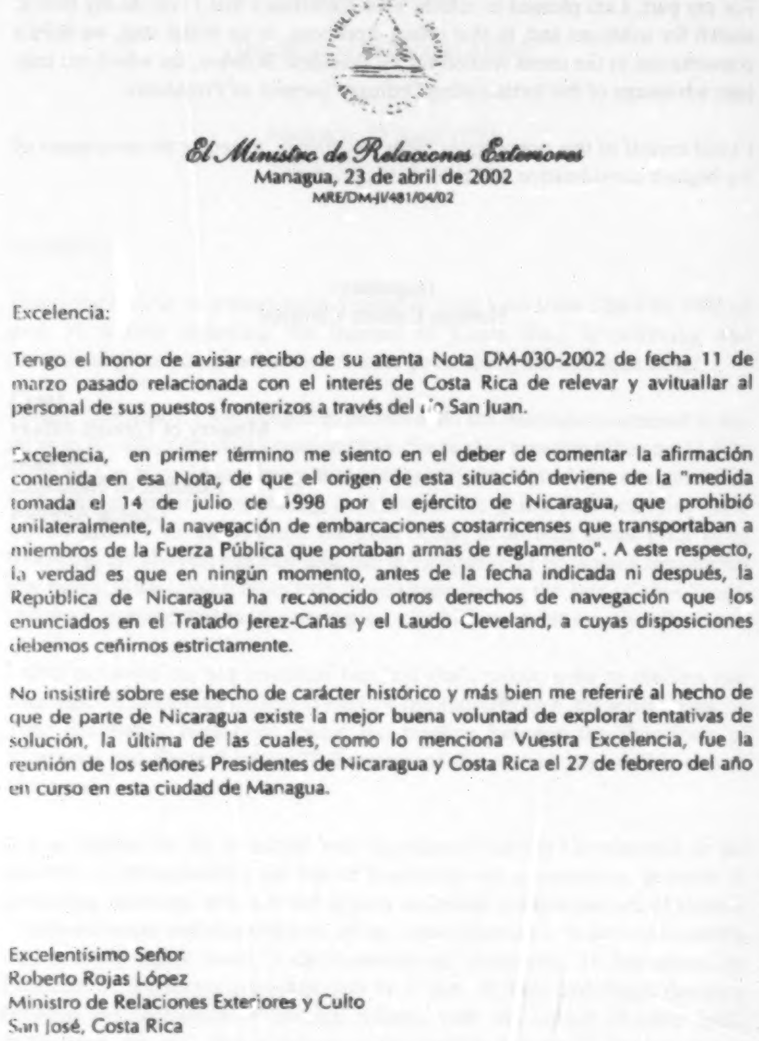
His Excellency
Roberto Rojas Lopez
Minister of Foreign Affairs and Worship
San Jose, Costa Rica

For my part, I am pleased to inform Your Excellency that I will do my best to search for solutions and, to that effect, I propose, as an initial step, we hold a conversation in the terms wished for by President Bolaños, for which we may take advantage of the forthcoming Ordinary Summit of Presidents.

I avail myself of this opportunity, Your Excellency, to renew the assurances of my highest consideration and personal appreciation.

(signature)
Norman Caldera Cardenal

(seal)
Ministry of Foreign Affairs
Managua
Republic of Nicaragua
Central America



El Ministro de Relaciones Exteriores
Managua, 23 de abril de 2002
MRE/DM-JI/481/04/02

Excelencia:

Tengo el honor de avisar recibo de su atenta Nota DM-030-2002 de fecha 11 de marzo pasado relacionada con el interés de Costa Rica de relevar y avituallar al personal de sus puestos fronterizos a través del río San Juan.

Excelencia, en primer término me siento en el deber de comentar la afirmación contenida en esa Nota, de que el origen de esta situación deviene de la "medida tomada el 14 de julio de 1998 por el ejército de Nicaragua, que prohibió unilateralmente, la navegación de embarcaciones costarricenses que transportaban a miembros de la Fuerza Pública que portaban armas de reglamento". A este respecto, la verdad es que en ningún momento, antes de la fecha indicada ni después, la República de Nicaragua ha reconocido otros derechos de navegación que los enunciados en el Tratado Jerez-Cañas y el Laudo Cleveland, a cuyas disposiciones debemos ceñirnos estrictamente.

No insistiré sobre ese hecho de carácter histórico y más bien me referiré al hecho de que de parte de Nicaragua existe la mejor buena voluntad de explorar tentativas de solución, la última de las cuales, como lo menciona Vuestra Excelencia, fue la reunión de los señores Presidentes de Nicaragua y Costa Rica el 27 de febrero del año en curso en esta ciudad de Managua.

Excelentísimo Señor
Roberto Rojas López
Ministro de Relaciones Exteriores y Culto
San José, Costa Rica

Me honra informar a Vuestra Excelencia que mi Gobierno, en aras de fortalecer la amistad y cooperación que nos unen, es de la opinión de propiciar encuentros con una agenda amplia en la que se encuentren temas de interés para ambos países, propios de nuestras estrechas relaciones de vecindad y del deseo de alcanzar mejores índices de desarrollo y prosperidad. En tal sentido, el Señor Presidente de Nicaragua considera que mediante el diálogo franco y directo entre las Cancillerías, asesoradas de otras instituciones del Estado, podremos encontrar respuestas a aquellos temas que son del interés de nuestros pueblos y Gobiernos.

Por mi parte, me es muy grato informar a Vuestra Excelencia que pondré todo empeño en la búsqueda de soluciones y para ello le propongo como paso inicial que tengamos una conversación en los términos deseados por el Señor Presidente Bolaños, para lo cual podemos aprovechar la próxima Cumbre Ordinaria de Presidentes.

Aprovecho la ocasión para reiterar a Vuestra Excelencia las muestras mi más alta consideración y aprecio personal.

Norman Caldera Cardenal

Annex 76

COSTA RICAN EMBASSY IN NICARAGUA TO MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA-GENERAL DIRECTORATE FOR LATIN AMERICA, NOTE VERBALE NO. ECR-079-5-2002, 21 MAY 2002

TRANSLATION

Embassy of Costa Rica
Managua, Nicaragua

ECR-079-5-2002

THE EMBASSY OF THE REPUBLIC OF COSTA RICA has the honour to address the Honourable Ministry of Foreign Affairs of Nicaragua –General Directorate for Latin America – and kindly requests the following information:

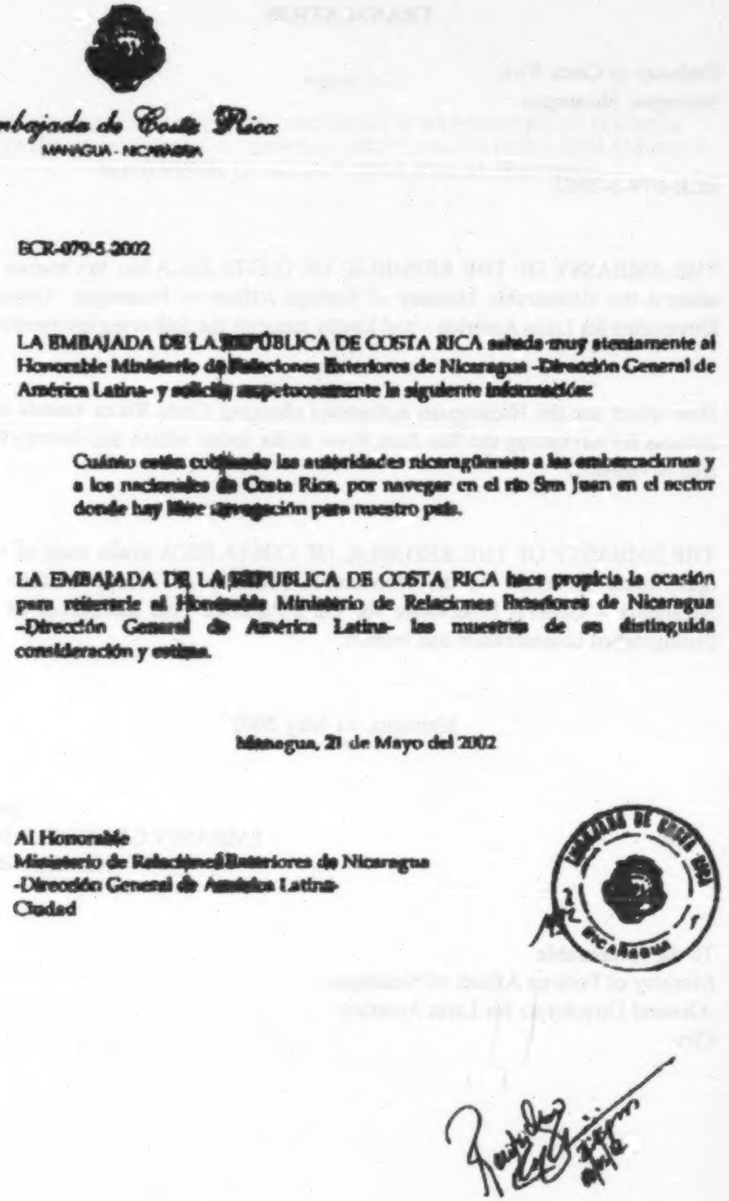
How much are the Nicaraguan authorities charging Costa Rican vessels and citizens for navigating the San Juan River in the sector where our country has free navigation?

THE EMBASSY OF THE REPUBLIC OF COSTA RICA avails itself of this opportunity to renew to the Honourable Ministry of Foreign Affairs of Nicaragua – General Directorate for Latin America– the assurances of its distinguished consideration and esteem.

Managua, 21 May 2002

(seal)
EMBASSY OF COSTA RICA
NICARAGUA

To the Honourable
Ministry of Foreign Affairs of Nicaragua
-General Directorate for Latin America-
City



Embajada de Costa Rica
MANAGUA - NICARAGUA

ECR-079-5-2002

LA EMBAJADA DE LA REPÚBLICA DE COSTA RICA saluda muy atentamente al Honorable Ministerio de Relaciones Exteriores de Nicaragua -Dirección General de América Latina- y solicita respetuosamente la siguiente información:

> Cuánto están cobrando las autoridades nicaragüenses a las embarcaciones y a los nacionales de Costa Rica, por navegar en el río San Juan en el sector donde hay libre navegación para nuestro país.

LA EMBAJADA DE LA REPÚBLICA DE COSTA RICA hace propicia la ocasión para reiterarle al Honorable Ministerio de Relaciones Exteriores de Nicaragua -Dirección General de América Latina- las muestras de su distinguida consideración y estima.

Managua, 21 de Mayo del 2002

Al Honorable
Ministerio de Relaciones Exteriores de Nicaragua
-Dirección General de América Latina-
Ciudad

Annex 77

NICARAGUAN DEPUTY FOREIGN MINISTER, SALVADOR STADTHAGEN ICAZA, TO COSTA RICAN DEPUTY FOREIGN MINISTER, ELAYNE WHYTE GOMEZ, NOTE NO. MRE/DV-JI/0068/05/02, 27 MAY 2002

TRANSLATION

The Deputy Minister of Foreign Affairs

Managua, 27 May 2002
MRE/DV-JI/0068/05/02

Excellency:

I have the honour of addressing you to follow up on our telephone conversation of Wednesday the 22nd of the current month in which we commented, among other things, on the information in the press made known by some of the media.

In this respect, I should like to inform you that I personally took an interest in obtaining information on this matter, the result being that in those cases where Costa Ricans navigate the lower course of the San Juan River with purposes that differ from those stipulated in the Jerez- Cañas Treaty, the provisions currently in force for entering the country are applied to them, in the same manner as they are to any person of foreign nationality entering the national territory at any international migration post.

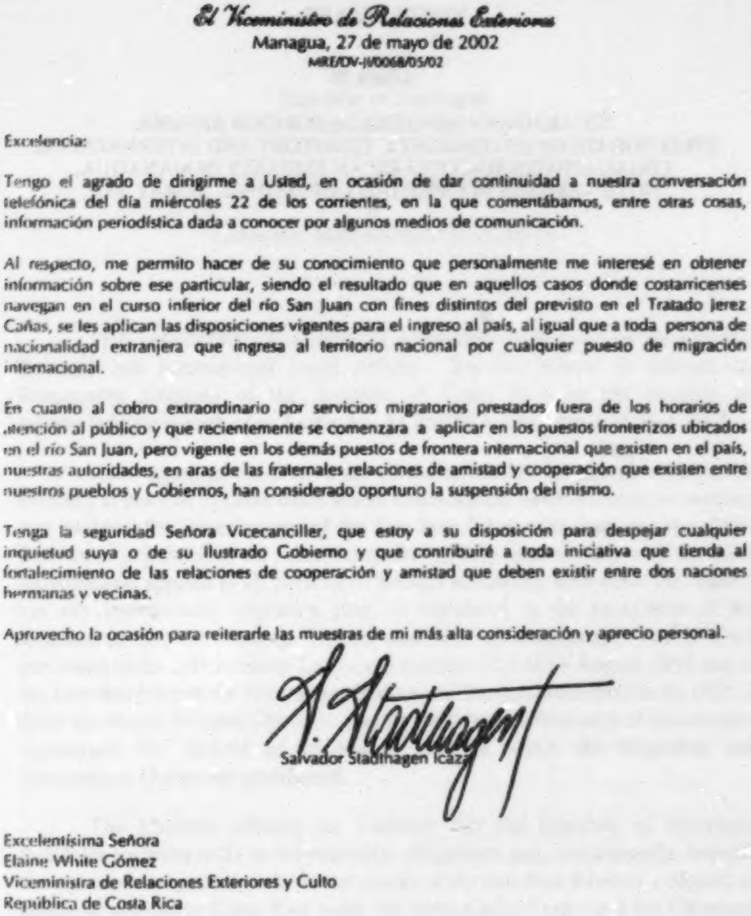
With regard to the additional charge for migration services rendered outside opening hours and that recently began to be applied at the border posts located on the San Juan River, but that was in force at all the other international border posts in the country, our authorities, in the interests of the fraternal ties of friendship and cooperation that exist between our peoples and Governments, have considered it appropriate to suspend it.

You may rest assured, Madame Deputy Minister that I am at your disposal should you or your Honourable Government have any query and that I shall support any initiative that intends to strengthen the relations of cooperation and friendship that should exist between two sister and neighbouring nations.

I avail myself of this opportunity to renew the assurances of my highest consideration and personal appreciation.

(signature)
Salvador Stadthagen Icaza

Her Excellency
Elaine White Gomez
Deputy Minister of Foreign Affairs and Worship
Republic of Costa Rica



El Viceministro de Relaciones Exteriores
Managua, 27 de mayo de 2002
MRE/DV-JI/0068/05/02

Excelencia:

Tengo el agrado de dirigirme a Usted, en ocasión de dar continuidad a nuestra conversación telefónica del día miércoles 22 de los corrientes, en la que comentábamos, entre otras cosas, información periodística dada a conocer por algunos medios de comunicación.

Al respecto, me permito hacer de su conocimiento que personalmente me interesé en obtener información sobre ese particular, siendo el resultado que en aquellos casos donde costarricenses navegan en el curso inferior del río San Juan con fines distintos del previsto en el Tratado Jerez Cañas, se les aplican las disposiciones vigentes para el ingreso al país, al igual que a toda persona de nacionalidad extranjera que ingresa al territorio nacional por cualquier puesto de migración internacional.

En cuanto al cobro extraordinario por servicios migratorios prestados fuera de los horarios de atención al público y que recientemente se comenzara a aplicar en los puestos fronterizos ubicados en el río San Juan, pero vigente en los demás puestos de frontera internacional que existen en el país, nuestras autoridades, en aras de las fraternales relaciones de amistad y cooperación que existen entre nuestros pueblos y Gobiernos, han considerado oportuno la suspensión del mismo.

Tenga la seguridad Señora Vicecanciller, que estoy a su disposición para despejar cualquier inquietud suya o de su Ilustrado Gobierno y que contribuiré a toda iniciativa que tienda al fortalecimiento de las relaciones de cooperación y amistad que deben existir entre dos naciones hermanas y vecinas.

Aprovecho la ocasión para reiterarle las muestras de mi más alta consideración y aprecio personal.

S. Stadthagen

Salvador Stadthagen Icaza

Excelentísima Señora
Elaine White Gómez
Viceministra de Relaciones Exteriores y Culto
República de Costa Rica

Annex 78

NICARAGUAN MINISTRY OF FOREIGN AFFAIRS, DIRECTORATE OF SOVEREIGNTY, TERRITORY AND INTERNATIONAL LEGAL AFFAIRS TO COSTA RICAN EMBASSY IN MANAGUA, NOTE VERBALE NO. MRE/DGSTAJI/335/05/02, 29 MAY 2002

TRANSLATION

(seal)
Republic of Nicaragua
Central America

The Ministry of Foreign Affairs

Letter No. MRE/DGSTAJI/335/05/02

THE MINISTRY OF FOREIGN AFFAIRS –Directorate of Sovereignty, Territory and International Legal Affairs - has the honour to address the Honourable Embassy of the Republic of Costa Rica on the occasion of acknowledging receipt of its Letter No. ECR-079-5-2002 dated 21 May 2002.

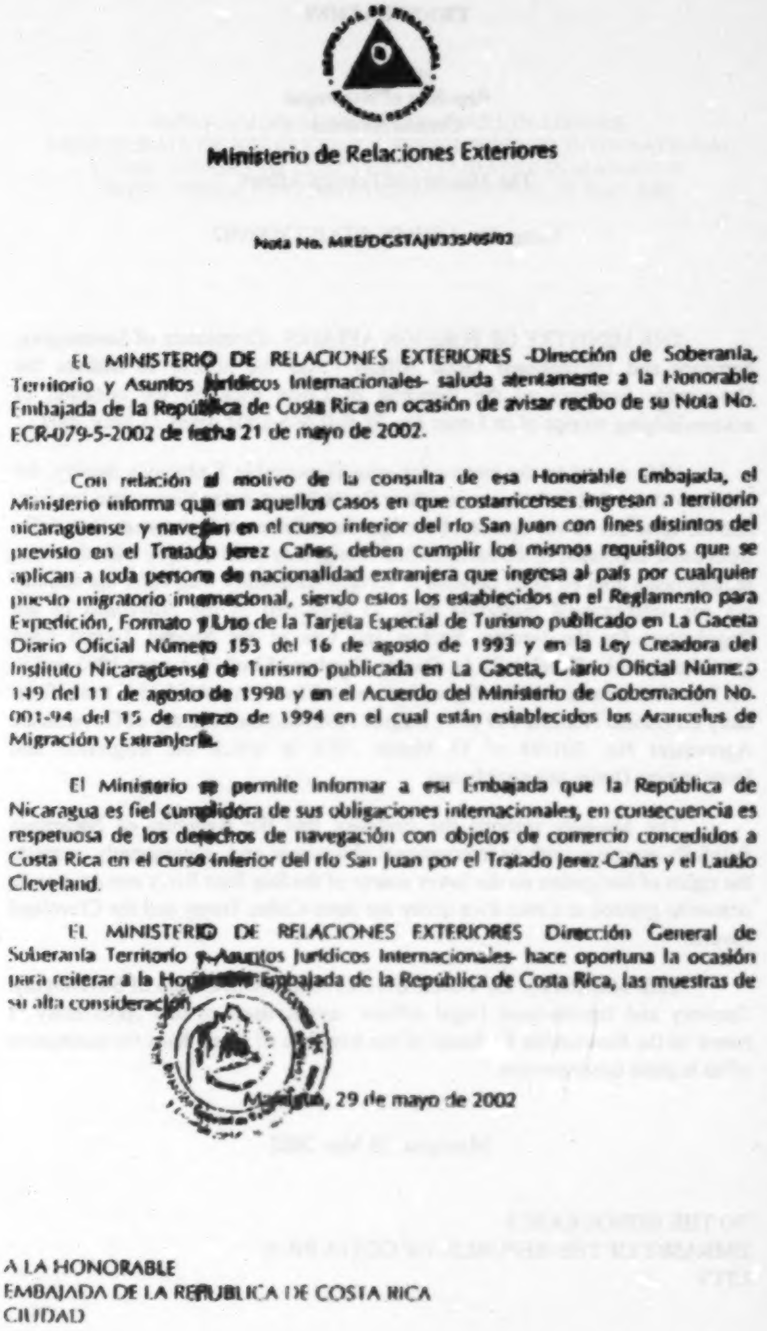
With regard to the motive for your Honourable Embassy's inquiry, the Ministry states that in those cases where Costa Ricans enter Nicaraguan territory and navigate the lower course of the San Juan River with purposes that differ from those stipulated in the Jerez-Cañas Treaty, they must comply with the same requirements applied to all persons of foreign nationality who enter the country via any international migration post, as stipulated in the provisions of the Regulations for the Issuing, Format and Use of the Special Tourist Card published in the official daily *La Gaceta* Number 153 of 16 August 1993 and in the Law that created the Nicaraguan Institute of Tourism published in the official daily *La Gaceta* Number 149 of 11 August 1998, and the Ministry of Governance Agreement No. 001-94 of 15 March 1994 in which the Migration and Immigration Duties are established.

The Ministry informs the Embassy that the Republic of Nicaragua faithfully complies with its international obligations and, consequently, respects the rights of navigation on the lower course of the San Juan River *con objetos de comercio* granted to Costa Rica under the Jerez-Cañas Treaty and the Cleveland Award.

THE MINISTRY OF FOREIGN AFFAIRS –Directorate of Sovereignty, Territory and International Legal Affairs –avails itself of this opportunity to renew to the Honourable Embassy of the Republic of Costa Rica the assurances of its highest consideration.

Managua, 29 May 2002

TO THE HONOURABLE
EMBASSY OF THE REPUBLIC OF COSTA RICA
CITY



Ministerio de Relaciones Exteriores

Nota No. MRE/DGSTAJI/335/05/02

EL MINISTERIO DE RELACIONES EXTERIORES -Dirección de Soberanía, Territorio y Asuntos Jurídicos Internacionales- saluda atentamente a la Honorable Embajada de la República de Costa Rica en ocasión de avisar recibo de su Nota No. ECR-079-5-2002 de fecha 21 de mayo de 2002.

Con relación al motivo de la consulta de esa Honorable Embajada, el Ministerio informa que en aquellos casos en que costarricenses ingresan a territorio nicaragüense y navegan en el curso inferior del río San Juan con fines distintos del previsto en el Tratado Jerez Cañas, deben cumplir los mismos requisitos que se aplican a toda persona de nacionalidad extranjera que ingresa al país por cualquier puesto migratorio internacional, siendo estos los establecidos en el Reglamento para Expedición, Formato y Uso de la Tarjeta Especial de Turismo publicado en La Gaceta Diario Oficial Número 153 del 16 de agosto de 1993 y en la Ley Creadora del Instituto Nicaragüense de Turismo publicada en La Gaceta, Diario Oficial Número 149 del 11 de agosto de 1998 y en el Acuerdo del Ministerio de Gobernación No. 001-94 del 15 de marzo de 1994 en el cual están establecidos los Aranceles de Migración y Extranjería.

El Ministerio se permite informar a esa Embajada que la República de Nicaragua es fiel cumplidora de sus obligaciones internacionales, en consecuencia es respetuosa de los derechos de navegación con objetos de comercio concedidos a Costa Rica en el curso inferior del río San Juan por el Tratado Jerez-Cañas y el Laudo Cleveland.

EL MINISTERIO DE RELACIONES EXTERIORES Dirección General de Soberanía Territorio y Asuntos Jurídicos Internacionales- hace oportuna la ocasión para reiterar a la Honorable Embajada de la República de Costa Rica, las muestras de su alta consideración.

Managua, 29 de mayo de 2002

A LA HONORABLE
EMBAJADA DE LA REPUBLICA DE COSTA RICA
CIUDAD

Annex 79

COSTA RICAN FOREIGN MINISTER, ROBERTO TOVAR FAJA, TO NICARAGUAN FOREIGN MINISTER, NORMAN CALDERA CARDENAL, NOTE NO. DM-202-2002, 5 AUGUST 2002

TRANSLATION

The Minister of Foreign Affairs and Worship

05 August 2002
DM 202-2002

Dear Minister:

I have the honour to address Your Excellency on the matter of reasserting to the Illustrious Government of the Republic of Nicaragua our belief that the peaceful solution to conflicts is a fundamental principle of international relations, as it has been understood by our Governments. We are convinced that diplomatic channels and procedures should always be open to the parties, allowing them to fulfil this principle and contribute to strengthening the ties of friendship and fraternity between our countries.

The Government of Costa Rica, motivated by this fraternal spirit and the renewed bilateral relations, trusts that both nations may continue to develop the process of a firm and definitive understanding of those aspects where there is a difference of opinion, in particular those regarding the navigation on the San Juan River. We are convinced the permanent solution to our differences will allow us to boost the promotion of economic and cultural integration of Central America, as well as that of sustainable development of the trans-border region, for the wellbeing of our peoples.

In order for our countries to not stray from the path of fraternal dialogue, an adequate relaxed atmosphere is required as is a sufficient period of time for continuing with the calm and in-depth analysis that will allow us to conclude this process successfully.

As Your Excellency will acknowledge, the Republic of Nicaragua's reservation regarding the voluntary acceptance of the jurisdiction or competence of the International Court of Justice, made by the Presidential Decree N° 335-2001 of 22 October 2001, leaves our Government in the very awkward position of having to evaluate the effects of this reservation with respect to the rights of the Republic of Costa Rica. In this sense, the Government of Nicaragua's decision constitutes a limitation on time with regard to our possibilities of bilateral negotiation.

In view of the above, the Government of the Republic of Costa Rica deems it necessary to request that the Honourable Government of Nicaragua seriously and urgently considers withdrawing the said reservation. The Government of the Republic of Costa Rica, for its part, would immediately withdraw the objections that it made in response at the time.

Bearing in mind the highest aims that move us, allow me to urge Your Excellency to grant this request the utmost importance, attention and a prompt response.

I avail myself of this opportunity, Your Excellency, to renew the assurances of my highest and distinguished consideration and esteem.

(signature)
Roberto Tovar Faja

Mr. Norman Caldera
Minister of Foreign Affairs
Republic of Nicaragua

El Ministro de Relaciones Exteriores y Culto

05 de agosto de 2002
DM 202-2002

Estimado Señor Ministro,

Tengo el agrado de dirigirme a Vuestra Excelencia, con ocasión de reiterar al Ilustrado Gobierno de la República de Nicaragua nuestra convicción de que la solución pacífica de los conflictos es un principio fundamental de las relaciones internacionales, tal y como lo han entendido nuestros Gobiernos. Estamos convencidos de que siempre deben existir vías y procedimientos diplomáticos abiertos a las partes, que permitan cumplir ese principio, y que coadyuven con el fortalecimiento de los vínculos de amistad y hermandad entre nuestros pueblos.

Motivado por este fraterno espíritu y las renovadas relaciones bilaterales, el Gobierno de Costa Rica confía en que ambas naciones podamos seguir desarrollando el proceso de entendimiento, estable y definitivo, sobre aquellos aspectos sobre los cuales exista diferencia de criterios, en particular los relativos a la navegación en el río San Juan. Estamos seguros que la solución permanente de nuestras diferencias permitirá impulsar con gran dinamismo la integración económica y cultural centroamericana y el desarrollo sostenible de la región transfronteriza, para el bienestar de nuestros pueblos.

Para que nuestras naciones no se alejen de la senda del diálogo fraterno, se requiere de un clima adecuado de distensión y del plazo suficiente para proseguir con el análisis pausado y profundo que nos permita culminar con éxito este proceso.

Como Su Excelencia reconocerá, la reserva de la República de Nicaragua a la aceptación voluntaria de la jurisdicción o competencia de la Corte Internacional de Justicia, hecha por Acuerdo Presidencial N. 335-2001 del 22 de octubre de 2001, coloca a nuestro Gobierno en la muy incómoda posición de tener que valorar los efectos de esta reserva respecto de los derechos de la República de Costa Rica. En este sentido, la decisión del Gobierno de Nicaragua causa una limitación en el tiempo respecto de nuestras posibilidades de negociación bilateral.

En consideración de lo expresado, el Gobierno de la República de Costa Rica estima necesario solicitar al Ilustrado Gobierno de la República de Nicaragua considerar seriamente y con carácter de urgencia, retirar dicha reserva. El Gobierno de la República de Costa Rica, por su parte, retiraría de inmediato las objeciones que en su momento interpuso como respuesta.

Con los altos propósitos que nos animan, me permito rogar a Vuestra Excelencia otorgar a la presente solicitud la más alta importancia, atención y apremiante respuesta.

Hago propicia la ocasión para reiterar a Vuestra Excelencia, las seguridades de mi más alta y distinguida consideración y estima,

Roberto Tovar Faja

Señor
Norman Caldera
Ministro de Relaciones Exteriores

Annex 80

COSTA RICAN FOREIGN MINISTER, ROBERTO TOVAR FAJA, TO NICARAGUAN FOREIGN MINISTER, NORMAN CALDERA CARDENAL, NOTE NO. DM-462-05, 28 SEPTEMBER 2005

TRANSLATION

The Minister of Foreign Affairs and Worship

September 28, 2005
DM-462-05

Excellency,

With the actions resulting from the Agreement that we signed on 26 September, 2002, we have demonstrated through the mechanisms of dialogue and cooperation how much can be achieved in benefit of our countries, both in the bilateral sphere as well as in the process of the Central American integration.

At that time we agreed to promote the Central American Free Trade Treaty with the United States of America, the Central American Agreement of Association with the European Union, the Puebla-Panama Plan and a Programme of border development to strengthen the economic and social conditions of the inhabitants of an area that should always be one of cooperation and never one of confrontation.

Today, as a result of an atmosphere of respect, fraternity and mutual trust, we have made those aspirations a reality of opportunities, that we must continue increasing.

Notwithstanding, despite all the achievements attained, it is also true that, as the abovementioned Agreement expires, the only source of discord between our nations still remains. The views our countries hold in relation to Costa Ricas' rights of navigation on the San Juan River have still not been able to be resolved by mutual understanding.

Costa Rica acknowledges that the ownership and sovereignty of the San Juan River belong to Nicaragua. But Costa Rica has the right that her navigation on the San Juan River be fully respected, in accordance to what is established in the pertinent legal instruments. Costa Rica does not seek more rights, or less rights, than those granted by said instruments.

Why not do away, once and for all, with the only source of discord between Costa Rica and Nicaragua? If our views diverge and have not been able to be reconciled bilaterally, nor by mechanisms of either mediation or arbitration, how can we not accept that at least one of the parties present the matter before the highest international judicial instance in order to overcome, once and for all, our only cause of disagreement?

Therefore, I am fulfilling my duty to inform you, and through you to the people of Nicaragua, that Costa Rica has decided to present the case before the International Court of Justice in order that it may analyze the points of view of our countries and establish the validity of each one of them.

To have recourse to the International Court of Justice could never represent a rupture in the friendship between two nations. Both Costa Rica and Nicaragua have accepted the Court as a means of assuring the peaceful coexistence and mutual respect between nations. The resolution of the differences should never be left to irrationality, but to the means of peaceful solution of controversies offered by international law. For this reason, Costa Rica cannot accept any threat as a reprisal for exercising this legitimate right.

We approach the International Court of Justice with the sincere intention that it's eventual decision will contribute to there never again be a motive for disagreement between Costa Rica and Nicaragua.

I sincerely hope that, by this means, we may leave behind, for future generations, fraternal and friendly relations between our countries without any causes that may affect them. This is our historic responsibility.

I take this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration,

Roberto Tovar Faja

His Excellency
Norman Caldera Cardenal
Minister of Foreign Affairs
Republic of Nicaragua

EMBAJADA DE NICARAGUA Y AMERICA CENTRAL SAN JOSE, COSTA RICA
28/09/05 3:0 pm

El Ministro de Relaciones Exteriores y Culto

28 de septiembre de 2005
DM-462-05

Excelencia,

Con las acciones que se derivan del Acuerdo que suscribimos el día 26 de septiembre del año 2002, hemos demostrado a través de los mecanismos del diálogo y la cooperación, cuánto se puede alcanzar en beneficio de nuestros países, tanto en el ámbito bilateral como en el proceso de la integración centroamericana.

Nos comprometimos en aquel momento a promover el Tratado de Libre Comercio de Centroamérica con los Estados Unidos de América, el Acuerdo de Asociación de Centroamérica con la Unión Europea, el Plan Puebla-Panamá, y un Programa de Desarrollo Fronterizo para robustecer las condiciones económicas y sociales de los pobladores de una zona que ha de ser siempre de cooperación y nunca de confrontación.

Hoy, fruto de un ambiente de respeto, fraternidad y confianza mutua, hemos hecho de aquellas aspiraciones una realidad de oportunidades, que debemos continuar acrecentando.

No obstante, a pesar de todos los logros alcanzados, también es una realidad que al vencimiento del Acuerdo mencionado, aún subsiste la única fuente de discordia entre nuestras dos naciones. Las tesis de nuestros países referentes a los derechos costarricenses de navegación sobre el Río San Juan aún no han podido ser resueltas en común entendimiento.

Costa Rica reconoce que la propiedad y la soberanía sobre el Río San Juan son de Nicaragua. Pero Costa Rica tiene el derecho a que se le respete plenamente su navegación en el Río San Juan de acuerdo con lo que establecen los instrumentos legales pertinentes. Costa Rica no pretende ni más derechos, ni menos derechos, que los que dichos instrumentos le otorgan.

¿Por qué no liquidar para siempre la única fuente de desacuerdo entre Costa Rica y Nicaragua? Si nuestras tesis son divergentes y no han podido ser conciliadas bilateralmente, ni mediante mecanismos de mediación o arbitraje, ¿cómo no aceptar que al menos una de las partes presente la cuestión ante la más alta instancia judicial internacional, con el fin de superar, para siempre, nuestra única causa de desacuerdo?

El Ministro de Relaciones Exteriores y Culto

-Página 2-
DM-462-05

En consecuencia, cumplo con el deber de anunciarle, y por su intermedio al pueblo nicaragüense, que Costa Rica ha decidido elevar el caso ante la Corte Internacional de Justicia para que analice los planteamientos de nuestros países y establezca la validez de cada uno de ellos.

Acudir a la Corte Internacional de Justicia jamás podría significar un quebranto de la amistad entre dos pueblos. Tanto Costa Rica como Nicaragua han aceptado a la Corte como un medio para asegurar la convivencia pacífica y el respeto mutuo entre las naciones. La resolución de las diferencias no se debe dejar nunca a la irracionalidad sino a los medios de solución pacífica de controversias que ofrece el derecho internacional. Por esa razón, Costa Rica no puede aceptar ninguna amenaza en represalia por ejercer ese legítimo derecho.

Acudimos a la Corte Internacional de Justicia con el sincero ánimo de que su eventual decisión contribuya a que entre Costa Rica y Nicaragua nunca más exista motivo para la discordia.

Abrigo la esperanza de que por esta vía dejemos para futuras generaciones una relación de fraternidad y de amistad entre nuestros países sin causas que las afecte. Es nuestra responsabilidad histórica.

Hago propicia la ocasión para reiterar a Vuestra Excelencia el testimonio de mi más alta y distinguida consideración.

Roberto Tovar Faja

Excelentísimo señor
Norman Caldera Cardenal
Ministro de Relaciones Exteriores
República de Nicaragua

EMBAJADA DE NICARAGUA
REPUBLICA DE NICARAGUA
AMERICA CENTRAL
SAN JOSE, COSTA RICA

28/9/05
5:30 PM

Annex 81

COSTA RICAN FOREIGN MINISTER, ROBERTO TOVAR FAJA, TO NICARAGUAN FOREIGN MINISTER, NORMAN CALDERA CARDENA

NOTE NO. DM-484-05, 20 OCTOBER 2005

TRANSLATION

The Minister of Foreign Affairs and Worship

October 20 2005
DM-484-05

Excellency,

I am honoured to address Your Excellency on the matter of informing you that Costa Rican citizens living in the San Juan River border zone have expressed their concern before this Ministry of Foreign Affairs regarding certain new measures adopted in relation to navigation on the San Juan, of which they have been verbally informed by members of the Nicaraguan National Army.

As recent reports in the Costa Rican and Nicaraguan press have indicated, the Costa Rican inhabitants of the San Juan River border zone were informed that, as a requirement to navigate the said river, they must carry the Nicaraguan flag in their boats alongside that of Costa Rica. Likewise, the residents were informed that they would also have to present their identification documents each time they need to enter or exit the river.

The Costa Rican residents of the area have informed us that these measures would hinder the daily navigation on the San Juan River to which they have always been accustomed, and in some cases impede it altogether.

By virtue of the above, Your Excellency, the Government of Costa Rica respectfully and fraternally, and without entering into legal considerations, urges the Illustrious Government of Nicaragua not to impose these measures, in the interests of the tradition of good neighbours and cordiality that exists in the area, and in order to avoid aggravating the current situation.

I would like to take this opportunity to once again express the testimony of my highest and most distinguished consideration.

Roberto Tovar Faja

His Excellency
Norman Caldera Cardenal
Minister of Foreign Affairs
Republic of Nicaragua

El Ministro de Relaciones Exteriores y Culto

20 de octubre de 2005
DM-484-05

Excelencia,

Me es grato saludar a Su Excelencia en ocasión de hacer de su conocimiento que ciudadanos costarricenses vecinos de la zona fronteriza del río San Juan han expresado, ante esta Cancillería, su angustia por algunas nuevas medidas adoptadas en relación con la navegación en el río San Juan, que les han sido informadas de manera verbal por miembros del Ejército Nacional de Nicaragua.

Tal como ha sido recogido recientemente por la prensa costarricense y nicaragüense, se habría indicado a los habitantes costarricenses de la zona fronteriza del río San Juan que como requisito para poder navegar por dicho río deben portar en sus botes la bandera nicaragüense a la par de la costarricense. Asimismo, se habría indicado a los vecinos que también deberán presentar documentos de identificación cada vez que necesiten entrar o salir del río.

Los habitantes costarricenses de la zona nos indican que estas medidas vienen a dificultarles, y en algunos casos a impedirles, la navegación cotidiana por el río San Juan, tal como tienen acostumbrado a hacer desde siempre.

En virtud de lo anterior, Excelencia, el Gobierno de Costa Rica, de manera respetuosa y fraternal, y sin entrar en consideraciones jurídicas, exhorta al Ilustrado Gobierno de Nicaragua a no aplicar dichas medidas, en aras de la buena vecindad y la tradicional cordialidad existente en la zona, y a fin de no agravar la situación actualmente existente.

Hago propicia la ocasión para reiterar a Vuestra Excelencia el testimonio de mi más alta y distinguida consideración.

R. T

Roberto Tovar Faja

Excelentísimo señor
Norman Caldera Cardenal
Ministro de Relaciones Exteriores
República de Nicaragua

Annex 82

NICARAGUAN FOREIGN MINISTER, NORMAN CALDERA CARDENAL, TO COSTA RICAN FOREIGN MINISTER, ROBERTO TOVAR FAJA, NOTE NO. MRE/DM-JI/1284/11/05, 9 NOVEMBER 2005

TRANSLATION

Republic of Nicaragua
Central America
The Minister of Foreign Affairs
Managua, 9 November 2005
MRE/DM-JI/1284/11/05

Excellency:

I am honoured to address Your Excellency on the matter of acknowledging receipt of your kind letter DM-484-05 of 20 October 2005.

In this respect, allow me once more to stress, Your Excellency, that, in accordance with the Jerez-Cañas Treaty of Limits between Nicaragua and Costa Rica of 15 April 1858, and the President Grover Cleveland Award of 22 March 1888, Nicaragua has exclusive sovereignty over the San Juan River with the jurisdiction, duties, powers and rights inherent to the same.

Likewise, I state once again, Your Excellency, that the Republic of Nicaragua is respectful of International Law and, with respect to the current situation, has always strictly adhered to the provisions of the abovementioned international instruments.

In this sense, the Republic of Costa Rica may rest assured that the rights of navigation "*con objetos de comercio*" in a sector of the San Juan River that were granted by Nicaragua to Costa Rica at that time, have always been respected within the limits established in the aforementioned legal documents. Those rights refer specifically to this type of navigation "*con objetos de comercio*", and they do not extend, in any way, to other types of navigation, be they, for example, the transport of passengers, fishing, tourism or armed purposes.

In compliance with the rights established in the Treaty and the Award, it is the duty of the State of Nicaragua, as Sovereign, to regulate and provide the rules and provisions she deems necessary to exercise the vesting of these powers over her territory.

His Excellency
Roberto Tovar Faja
Minister of Foreign Affairs and Worship
Republic of Costa Rica

Page No. 2
9 November 2005

Allow me to remind Your Excellency that, in the interests of the good relations that have existed and continue to do so between both Peoples and Governments, Nicaragua and Costa Rica have granted border courtesies to facilitate local traffic (such as vicinal permits), which cannot ever - according to International Law - be referred to as Law or as precedents, since they are merely local manifestations favouring the coexistence of neighbours that do not, in any way whatsoever, create obligations that may be demanded.

I feel it is my obligation to, likewise, remind Your Excellency that respect for Territorial Sovereignty between Independent States, which necessarily implies respect for the powers and rights inherent in it, forms the cornerstone of international relations.

I would like to take this opportunity to express the testimony of my highest consideration and esteem.

(signature)
Norman Caldera Cardenal
Minister of Foreign Affairs
Managua
Republic of Nicaragua
Central America

El Ministro de Relaciones Exteriores

Managua, 9 de noviembre de 2005
MRE/DM-JI/1284/11/05

Excelencia:

Tengo el honor de dirigirme a Vuestra Excelencia, en ocasión de avisar recibo de su atenta comunicación DM-484-05 de fecha 20 de octubre del año en curso.

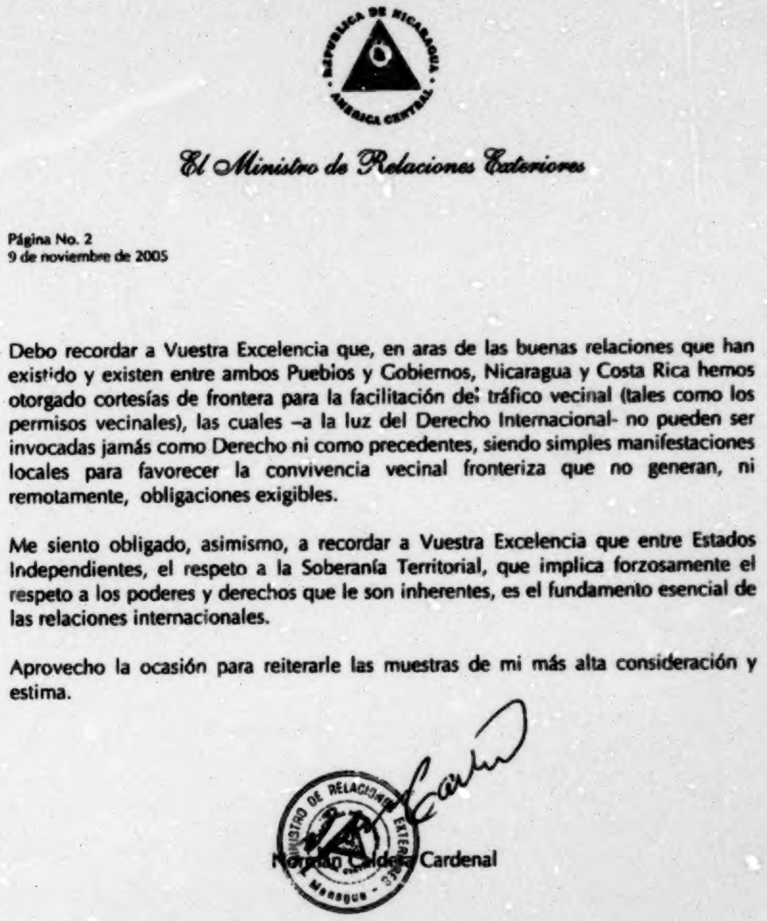
Al respecto, me permito reiterar a Vuestra Excelencia que, de conformidad con el Tratado de Límites entre Nicaragua y Costa Rica Jerez-Cañas del 15 de abril de 1858 y el Laudo del Presidente Grover Cleveland del 22 de marzo de 1888, Nicaragua tiene la soberanía exclusiva sobre el río San Juan, con las competencias, funciones, poderes y derechos inherentes a la misma.

Igualmente, reitero a Vuestra Excelencia que la República de Nicaragua es respetuosa del Derecho Internacional y, en relación a la presente situación, siempre se ha ceñido estrictamente a lo dispuesto en los instrumentos internacionales referidos.

En tal sentido, la República de Costa Rica puede tener las seguridades que siempre se han respetado los derechos de navegación "con objetos de comercio", en un sector del río San Juan, que Nicaragua le concedió a Costa Rica en su oportunidad, dentro de los límites establecidos en los citados documentos jurídicos. Tales derechos se refieren específicamente a ese tipo de navegación "con objetos de comercio" y no son extensivos, en modo alguno, a otro tipo de navegación ya sea, por ejemplo, de transporte de pasajeros, pesca, turismo o bien de naturaleza armada.

Respetando los derechos establecidos en el Tratado y el Laudo, como Soberano que es, corresponde al Estado de Nicaragua regular y disponer las normativas y disposiciones que considere necesarias en ejercicio de sus atribuciones sobre su territorio.

Excelentísimo Señor
Roberto Tovar Faja
Ministro de Relaciones Exteriores y Culto
República de Costa Rica



El Ministro de Relaciones Exteriores

Página No. 2
9 de noviembre de 2005

Debo recordar a Vuestra Excelencia que, en aras de las buenas relaciones que han existido y existen entre ambos Pueblos y Gobiernos, Nicaragua y Costa Rica hemos otorgado cortesías de frontera para la facilitación del tráfico vecinal (tales como los permisos vecinales), las cuales –a la luz del Derecho Internacional- no pueden ser invocadas jamás como Derecho ni como precedentes, siendo simples manifestaciones locales para favorecer la convivencia vecinal fronteriza que no generan, ni remotamente, obligaciones exigibles.

Me siento obligado, asimismo, a recordar a Vuestra Excelencia que entre Estados Independientes, el respeto a la Soberanía Territorial, que implica forzosamente el respeto a los poderes y derechos que le son inherentes, es el fundamento esencial de las relaciones internacionales.

Aprovecho la ocasión para reiterarle las muestras de mi más alta consideración y estima.

Norman Caldera Cardenal

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